passes without any farther, if after the year I may poind, or if I must give a new charge before I can poind, seeing the first charge may be presumed to be forgot.

*Advocates' MS. No.* 292, § 4, *folio* 123.

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1672. *January* 10. JAMES JOHNSTON *against* LORD BELHAVEN.

MY Lord Belhaven being pursued upon a bond of his father's by James Johnston, he ALLEGED the same was prescribed, because nothing was done thereupon within forty years. REPLIED, the same was registrate within the forty years.

The Lords found registration allenarly not a sufficient interruption of prescription. *Vide* somewhat like in Dury, *27th November* 1630, *Laird of Lauder* against *Colmeslie.*

*Advocates' MS. No.* 293, *folio* 123.

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1672. *January.*

ON being pursued to pay a sum, it was ALLEGED, No process upon the second summons, because executed against the defender to compear within twenty-four hours; which, though it be lawful where the party summoned dwells within the town of Edinburgh, yet cannot be extended to the Canongate, where this defender was the time of the giving the citation, and being a stranger was going to his house: and albeit the Canongate lie within the privileges and liberties of Edinburgh, yet that is not enough to extend this privilege of summoning upon twenty-four hours to them, else the same might be said of Leith, which were absurd. ANSWERED, 1*mo*, The Canongate lies within the town's liberties. 2*do*, The reason of the privilege is the propinquity and nearness to the Court of Justice, which holds as well in the Canongate as in Edinburgh; and on this account if one within Lothian be cited to compear within three days the citation will be sustained.

The Lords found him lawfully cited, and extended it to the Canongate.

*L.* 139. *D. de V. Significatione, Sub nomine urbis veniunt suburbia; L.* 2. *ff. de V. significatione.* And in 1570 a Parliament being summoned to compear at Edinburgh, it was resolved by the lawyers that it might legally hold in the Canongate. See Spotswood *ad num.* 1570, page 252.

*Advocates' MS. No.* 294, *folio* 123.

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1672. *January* 10. The EARL OF NITHSDALE *against* the TENANTS OF DUNCOW.

IT was ALLEGED against a pursuit, that the pursuer must tine his action, conform to the 219 act of Parliament in 1594, declaring that whatsoever pursuer

should slay, wound, or otherwise invade the defender during the time of the dependence of their action, should tine his cause, without any other probation save of the riot, and this whether he did it himself or others by his red or counsel; but *ita est,* this pursuer had suborned persons to beat and hurt him, who had accordingly executed the orders given them. It was ANSWERED he behoved to say his blood was shed.

The Lords found he needed not, because the act is conceived *alternativè,* if he either wound to the effusion of blood, or they invade one another in any sort whereon they could be criminally accused.

2*do,* ANSWERED, the subordination and mandate was only probable by the pursuer's oath and not by witnesses. REPLIED, though in *civilibus* a mandate was only probable *scripto vel juramento,* yet they having replied that he was art and part, and that it was done *ejus ope et consilio;* as probation by witnesses of this would be admitted in a criminal pursuit before the Justices, and would import conviction, so the same probation may be used here. *Vide supra, No.* 162, [*Lord Advocate* against *Robertsones, 9th March* 1671.]

They were to have the Lords' answer, whether his order could be proven otherwise than by his own oath. See this case fully in the informations.

*Advocates' MS. No. 295, folio* 123.

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1672. *January* 16. MR. WILLIAM BEATON, Advocate, *against* SCOT.

IT was about this time controverted whether or not a base infeftment, clad with possession for years or terms before the rebellion of the granter, will exclude the donatar to his escheat. It seemed to many as *juris indubitati* that it would; yet the Lords demurred thereon, and ordained practiques to be adduced *hinc inde;* (because, forsooth, my Lord Stair in his book prefers the donatar very dogmatically and magisterially.) And it makes me call to mind *John Scot's* case against one *Hog,* on the 15*th of January* 1666, wherein the Lords found a base infeftment of warrandice not clad with possession save what he had of the principal lands, preferable to a posterior public infeftment in the same warrandice lands, clad with thirty or forty years possession.

*Advocates' MS. No.* 292, § 2. *folio* 123.

1672. *January* 16.—In the competition *supra* at *No.* 292, betwixt a base infeftment clad with possession before the denunciation, and the donatar to the said superior, granter of the infeftment, his escheat: the Lords at last found the base infeftment preferable, and that in respect of a practique following on a full debate in the time of the English.

This was well decided, in my judgment, else where a nobleman or gentleman having vassals holding of him, unconfirmed by the immediate superior, went to the horn, and his liferent is gifted, the mails and duties of the whole vassals' lands, though alienated, if they be not confirmed, should belong to the donatar. See the informations of this beside me. *Vide infra, No.* 413, [*Tenants of Bathgate* against *Crawfurd, July* 1673.] *Vide* Dury, 19*th March*