

before : and as to the turnpike, it was ordinary that divers heritors entered to their houses by one and the same turnpike, and that it would be a prejudice to the structure to build more turnpikes, when they were needless.

The Lords, having considered the submission to the town-council, bearing, that not only all the houses to be builded should be of stone-work, but that the manner of all the building should be determined by them, without any reservation of any person's right or interest ; and that upon the matter any pretended prejudice was satisfied, they did discharge the suspension, and, notwithstanding thereof, ordained the building to go on conform to the decreet of the dean-of-guild court ; as being a matter of public concernment, and ought not to be retarded upon the account of lesion, to which the dean-of-guild and his council were most proper judges.

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1675. *February 19.* JOHN DAIKLE, English Merchant, *against* DAVID HOME.

THE said David, being cautioner in a bond for the deceased Earl of Home, to the said John Daikle, which bond was made and subscribed at London ; being charged to make payment, did suspend upon this reason, That the principal, the Earl of Home, dying in prison, by the law of England it did liberate his cautioner.

It was ANSWERED, that, notwithstanding of that reason, the letters were found orderly proceeded. *2d.* That there is no such law or custom in England. *3d.* The bond being granted by Scotchmen, ought to have execution here, according to the law of Scotland, where the death of the principal doth not liberate the cautioners ; and, even in England, that cannot be alleged but where the principal was at first incarcerated for that debt.

It was REPLIED, that the letters were found orderly proceeded in the first suspension, because there was no reason then libelled but that the Earl died in prison ; whereas the contrary was notourly known ; and, by an ordinance of the Lords, upon consignation of a special sum, there was liberty granted to suspend *de novo*, upon this reason, that the principal was prisoner, and let out upon a guard, under which he died, and his corpse carried back to the prison to liberate the keeper ; which, by the law of England, did liberate the cautioner.

The Lords, before answer, did grant commission to try the law and custom of England in this last case, by a report of some of the judges of the common law.

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1675. *February 19.* PETER PALLET, Merchant in Bourdeaux, *against* RODGER and VEATCH.

IN an action against Sir George Maxwell, for payment of the remainder of a debt due by a bond granted to Robert Brown, as assignee by James Sanderson, to whom Colonel Stewart in Ireland was debtor in a great sum of money, for