

get the stipend for such years as they served through connivance, aye till they were removed by a sentence.

The Lords likewise repelled this defence in respect of the answer aforesaid.

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1698. *December 21.* The TOWN of ABERDEEN *against* The ABERDEEN BREWERS.

The Town of Aberdeen having obtained an Act of Parliament in their favours, imposing two pennies on the pint of all ale brewed and vended within their bounds; and the Brewers being convened and decerned thereon, they raised suspension and reduction on thir reasons, *1mo.* That sundry of the burgeses entered their protestations against the procuring any such oppressive Act; and their Commissioner to the Parliament ought not to have acted contrary to the known inclinations of the Town, his constituents. *2do.* The Magistrates, in respect of the scarcity, discharged brewing, and took the bear, which was to have been malted, and grinded it into meal; by which, having taken away the mean of our livelihood, our brewing, you are liable to refund our damage, and we must have retention of the Excise.

ANSWERED to the *first*,—Whatever was the manner of procuring the Act, the same cannot be disclaimed now, having all the formality of such Acts. And for the *second*, Necessity has no law: it was better to convert the bear into meal, than many poor Christians to starve; and they can crave no abatement, because their brewing is less than formerly, for then they pay less excise conform to their brewing; and if they had damage, it is not liquidated, and so cannot meet this charge.

The Lords repelled the reasons; but reserved their action for damages, as accords.

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1698. *December 29.* GEORGE DENISTON *against* THOMAS SMITH, Merchant.

THERE were mutual complaints betwixt George Deniston, writer, and Thomas Smith, merchant, wherein George complained, that the other had beat him publicly at the Cross of Edinburgh, for no other cause but that he agented a process for a poor woman against him.

Smith ALLEGED, *1mo.* This scuffle is pretended to have been done three years ago, and so is prescribed *dissimulatione*, when *tales injuriæ statim ad animum non revocantur*. *2do.* It is already judged by the bailies; and he was fined in £50.

ANSWERED,---Our law knew no such prescriptions of riots as three years if not pursued within that time. To the *second*,—The magistrates interposing by their procurator-fiscal was only collusive; and, *esto* this satisfied the *vindicta publica*, yet there being nothing decerned for his vindication and reparation, it neither absorbed nor cutted off his process *ad vindictam privatam*; likeas, by the 38th Act Parliament 1661, anent Justices of the Peace, it is declared, if the

delinquent be not punished answerable to the offence and wrong sustained, then the party may complain to get him more condignly punished.

The Lords repelled the defences, in respect of the answers; and found, notwithstanding it was not *de recenti*, and that it was judged by the bailies, yet neither of these took away his private interest to complain and seek redress.

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1698. *December 29.* SIR JOHN SHAW of GREENOCK *against* CRAWFURD of CARSEBURN.

SIR John Shaw of Greenock pursues Crawford of Carseburn upon the 19th Act of Parliament 1617, to demolish his dovecote, because he has not ten chalders of victual lying within two miles thereof, as the said Act requires. And a probation having been granted, before answer, to try what kind of dovecote this was, and what rent he had adjacent thereto, and the damages done to Greenock's tenants' corn; and the same coming to be advised this day, it appeared this dovecote was built above a stable, and consisted of 218 holes, besides sundry closed up a little before; and that he had about £1100 Scots of rent there.

ANSWERED for Greenock,—It appeared, by the probation, there was only six chalders of victual of arable ground, and that all the rest of the rents were made up of salt-pans, house-mails, and feu-duties, which could be no sustenance for doves to live on, and did not answer the design of the Act of Parliament, that doves should not oppress other men's corns.

REPLIED,—This cannot be called properly a dove-cote, such as the Act prohibits and condemns, but only a pigeon-house; and, by improvements, he has made his lands now worth £1000 Scots by year, besides the other extrinsic subjects of house-rent, &c.

The Lords considered the process as *in amukationem vicini*, and that few dovecotes had been demolished on this Act, though there be many in some burghs of regalities and baronies, such as Dalkeith, &c. where the proprietor has but little rent adjacent; and yet the Act was reasonable, and could not be said to be in desuetude; therefore they allowed Carseburn a further probation, that he had land rent there, equivalent to the Act of Parliament, before they would discern against him. See Craig *Feudor.* p. 191, who tells, by the customs of Normandy, a land-interest is required in the owner of cunnygars as well as dovecotes, seeing cunnies make as much destruction and waste upon the neighbouring corns, if not more than doves.

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1699. *January 3.* SIR JOHN SHAW of GREENOCK *against* The CREDITORS of DAVID BRUCE of CLACKMANNAN.

MERSINGTON reported Sir John Shaw of Greenock against the Creditors of David Bruce of Clackmannan, being a reduction and improbation of the rights