

The Lords found, That the defender was guilty of contempt of their Lordships' authority, and found him liable in damages and expenses.

*Act.* Jo. Kennedy. *Alt.* Ja. Ferguson. M'Kenzie, *Clerk.*

*Vol. II. No. 39. page 51.*

1716. *December 5.*

MICHAEL FRASER, Supplicant.

THE said Mr. Fraser, minister at Doviot, being convened before the presbytery of Inverness, to answer for several treasonable practices, such as aiding, assisting, and abetting the rebels, &c.

He presented a bill of advocation before the Ordinary, founded on the Act 21st, *septimo Annæ*, entitled, an Act for improving the Union of the two kingdoms by the justice-courts of commissioners of oyer and terminer, specially appointed by his Majesty for that effect; but the Ordinary having refused to pass his bill, he next gives in a petition to the Lords, wherein he alleges, That his reason of advocation ought to be sustained, because that no church-judicature being competent to determine in high treason, there can no reason be given why that presbytery should have ordained him to be cited for that effect before them; if it is not that, though they are not competent to high treason, yet that they thought themselves competent to inflict such censures and punishment on the party found guilty as consisted with their authority. But the supplicant alleged they were as incompetent to that as the other: because,

*1mo*, Before they could pretend to punish, they behoved to lead a proof that the petitioner did assist the rebels.

*2do*, That these persons alleged to be so aided and assisted by him were rebels, and guilty of high treason, which no presbytery is competent to do; since this were plainly to determine in high treason.

*3tio*, They behoved to find that the deeds alleged against him imported assistance to rebels, and so were criminal; since, if they were not, he could not be subject to censure or punishment: and, upon all this, they behoved to lead a probation. All which is undoubtedly to determine in high treason; only they are not competent judges to hang and forfeit; but this does nowise alter the case, since, if they are not competent to determine, they cannot be competent to cognosce.

The Lords refused the desire of the petition.

Patrick Grant, *Procurator and Clerk*, ut supra.

*Vol. II. No. 41. page 56.*

1716. *December 13.* Sir GEORGE MAXWELL of Orchardtown and MAXWELL of Cuill *against* M'LELAND of Barklay.

M'LELAND of Barklay having taken a decret of removing against Sir George Maxwell, and Maxwell of Cuill, his factor, before the Baron Court of Bargallan,