

No. 32. 1744, July 25. ROBERTSON *against* SIR JAMES STIRLING, &c.

THE question now turned chiefly upon the competency of the Court to enquire by suspension, Whether the Commissioners were qualified in the terms of law? in which question I had great difficulty upon moving the bill, but was determined by an observation in the answers, that if one not having authority should keep a man in captivity without pretence of law or in execution of this act he is indeed guilty of a high crime, but the remedy lies not in this Court. But Drummore and Justice-Clerk brought over again the first question, Whether we can review the same? and Justice-Clerk seemed to think, that if their judgment was doubtful we could not review, but if they were apparently iniquitous, we might. Upon putting the question it carried by the President's casting vote that we could not review upon iniquity. The next question was, Whether we had jurisdiction to enquire if the Commissioners were qualified? and it carried seven besides the President to five that we had not; and therefore refused the petition and adhered. Kilkerran and Strichen did not vote in the first question, and Justice-Clerk, Drummore, &c. voted against it. But in the second, Justice-Clerk and Drummore voted for the interlocutor as a consequence of the first interlocutor, and yet Kilkerran and Strichen who would not vote in the first question, voted against the interlocutor in the second question, and Dun who voted for the first interlocutor voted against the second.

* * * The following case is here referred to :

On a petition of a messenger at Glasgow who had been adjudged as a soldier on the late act, complaining that he had presented a bill of suspension to Strichen, on this ground that he was in no sense within the description of the act, and that Strichen refused to write upon the bill; we remitted to Strichen to refuse the bill, 18th July 1744.

No. 33. 1745, Feb. 21, 24. EARL OF BREADALBANE'S PETITION.

THE Earl by petition represented that the patent of his honours of 16 (13) August 1681 though passed the Great Seal yet never was recorded in the records of Chancery, but a part of the record left blank where it should have been inserted, which he discovered on applying for an extract for which he had some use, and therefore praying for warrant and order to the Director to fill it up. Some of us doubted because that was the Chancellor's record, and by the same rule if charters of land under the Great Seal should not be found recorded the like application might be made; but a precedent being quoted from the appendix to Sir William Cockburn's answers to Sir Alexander Cockburn of Langton's petition concerning the Usher's office then depending before us, viz. a like application in this Court by Sir William Ballenden, as pro-nevoy and heir to Sir John Ballenden of Achinounshill to record a charter by Queen Mary in 1565 of the office of Keeper of the Exchequer-door, and which was granted 26th November 1635, and though directed to the Clerk Register, and mentioned only the registers in general, yet appears to have been filled up in the same way in the record of charters, lib. 32. No. 671, but I suppose only in the end of the book, for they do not appear. (I mean the charters) to

have been inserted in the order of their dates; therefore we ordered this charter with our deliverance on this petition to be inserted in that blank.

No. 34. 1746, July 1. JEAN DENHOLM, *Petitioner*.

THERE being a long vacancy in the magistracy of this burgh, Edinburgh, by the Rebels stopping the election at Michaelmas last, the question was, Whether we can appoint Magistrates of the town to receive resignations and grant infeftments, as we can Sheriffs? The difference is, that Sheriffs as to that point are purely ministerial to execute the precept of sasine granted by the King, whereas Bailies give the precept or charter as if they were superiors. But the President thought that this was no more than to appoint an officer that the course of the law be not interrupted, and it carried to appoint, only Tinwald and I did not vote; and accordingly they appointed Bailie Hamilton one of the last Bailies.

Upon a petition from the town clerks and others, with a long memorial, the Lords authorized the four Bailies of last year to receive resignations and grant infeftments of the burgage lands.

The Lords this day (18th July) nominate and appoint Bailie Gavin Hamilton, and two or three more, or any of them in that part, to receive applications from insolvent prisoners upon the act 1696, and to execute that act. This was on the petition of James Braidwood, and some weeks ago on the petition of one Beugo.

The Lords having the 1st, 2d, and 18th of this month appointed Bailies for giving insolvent debtors the benefit of the act 1696 in the town of Edinburgh during the vacancy of the magistracy,—the town clerks prayed us to appoint a Dean of Guild and Council, which we granted, but restricted their powers to stopping encroachments in building and preventing unfreemen's retailing.

No. 35. 1746, June 6, July 16. SCOTT *against* FULLERTON, &c.

THE Lords adhered unanimously to the Ordinary's interlocutor fixing the wideness of the hecks to three inches; 2dly, That the soles of the cruives must be in the bottom or channel of the river, but as to the height and breadth or thickness of the dike, as there was no line regulating them nor reason, if it was not to allow the salmon to leap them, so the practise in the river Don 1666 seemed founded on the tenor of the grant referring to former possession, and that in 1684 in this river seemed also to be on former possession, at least that in 1662 was so in express words, and did not limit the breadth but only height: Therefore the major part were for altering this interlocutor as to that point, and found no sufficient cause yet shown for limiting the defender as to the height or breadth of the dike, and continued the rest of the cause till Tuesday, and parties procurators to be then heard. We, June 11th, after hearing these two days, unanimously altered the Ordinary's interlocutor with respect to the side-dike, and found that there was no sufficient cause for removing it since the soles of the cruives are ordered to be lowered, and the Ordinary himself agreed. And lastly, We unanimously adhered to the Ordinary's interlocutor ordering the soles of the cruives to be lowered, and the wideness of the