

of the county where he shall be seized, to put in answers against the first of November, and also to pay what damages shall be awarded. I proposed to make it *only judicio sisti et judicatum solvi*.

* * * The case is again mentioned thus:

December 16, 1746.

THIS was a complaint against the Captain, for spuilzieing some household furniture, cows, &c. from his tenant David Ogilvie, on pretence of his being in the Rebellion, whereby he was in hazard of losing his rent, and for first eating the grass and after setting the parks of two other tenants who had no accession to the Rebellion, for which the Captain got L.16 sterling, and publishing a roup of the then growing crop,—which was presented to us the end of July last; and as the offence required a summary and extraordinary remedy, we ordered the Captain to put in answers against a limited day, and on his failure granted warrant to apprehend him till he should answer and find caution *judicatum solvi*. The warrant was not executed, and this Session he put in answers excusing his contumacy and justifying all he had done, and pleading the act of indemnity. The answers which were drawn by Mr Robert Craigie, late Lord Advocate, made some noise here and at London, where I am told they were reprinted, and greatly cried out against, which is indeed one principal reason for my keeping them. The importance of the question, *i. e.* what acts were justified by the indemnity made us appoint a hearing in presence, and upon the hearing we unanimously found that the facts complained of did not fall under the indemnity, and therefore allowed a proof. Only Leven differed, and mentioned a defence in fact that had not been mentioned in the pleading, that the Captain did not pocket any of the money but distributed it among the soldiers, which if it had been alleged from the Bar and offered to be proved I should have had more difficulty on the indemnity, but as this was the first day that I had been in the House after the loss of my dearest dear wife, who was the joy and comfort of my whole life, I was not able to speak further than to give my vote.—27th January, On a reclaiming bill we gave an act before answer to this indemnity.

No. 38. 1747, July 21. COMMISSARIES OF EDINBURGH *against* THE
COMMISSARIES OF DUNKELD.

PREFER the Commissaries of Edinburgh, although we generally agreed except Tinwald, that these parishes are in the diocese of Dunkeld, and notwithstanding the 6th act 1609, *me inter alios renit*. December 15th Adhered. I was in the Outer-House.

No. 39. 1747, July 22. JOHN BLAIR *against* HUGH BLAIR of Borgue.

JOHN BLAIR sued before the Commissaries of Edinburgh a declarator of nullity of the marriage of Hugh Blair his brother on the ground of idiotry and incapacity to consent. The Commissaries, after examining him in their presence, gave an act for proving. The defender's friends presented a bill of advocation, 1st, that this reason of nullity was a novelty; 2dly, That they were no judges to try idiotry, which could only be done by an inquest. We pretty unanimously refusd the bill, *renit. multum* Tinwald.