

oppress the lieges, especially the poorest sort, without remedy. The difficulty therefore was to judge in this case, so as not to discourage gentlemen from accepting of those offices, and discharging their trust, and yet not put it in their power to oppress. What made the iniquity the more glaring here, was a circumstance not noticed in the information, but which appeared from the decret, viz. that though Gibb did not tell Williamson before he got his bill of the cheat Bruce had been guilty of, yet he told it him at meeting, and asked his assistance to carry Bruce to prison, which he refused, and did not then demand back his bill; so that instead of Gibb's putting a trick upon Williamson, this last, by his process before the Justices, was taking a catch of him;—yet as there appeared nothing rigorous or cruel in the proceedings of the Justices, (men of good character) we rather presumed that they erred through ignorance. I confess, though I would not carry it so far as to punish the Justices by fining or otherwise, yet in as far as the action was *rei persecutoria*, I inclined to find them liable,—yet I easily yielded to the opinion of the other Lords who spoke, and there was no vote.

No. 11. 1742, July 30. CASE OF CLERK OF SUPPLY OF BANFFSHIRE.

See Note of No. 2, *voce* COMMISSIONERS OF SUPPLY.

* * The case of the Collector of Supply of Lanark, 2d July 1747 referred to here and *voce* COMMISSIONERS OF SUPPLY is thus mentioned:

WE passed a bill of suspension of the election of the Collector of Supply of Lanark to the end of discussing the point of right, but prejudice of the Collectors continuing to levy the cess till the suspension be discussed; and the parties agreed that the suspension should be discussed on the bill, *referente* Leven. This is the reverse of what we did 30th July 1742, in the election of a Clerk of Supply in Banffshire, and had done before in the Merse.

No. 12. 1743, Nov. 8. CASE OF MURRAY, KEEPER OF MINUTE-BOOK.

See Note of No. 9, *voce* MINOR.

No. 13. 1744, Dec. 14. SIR A. COCKBURN *against* SIR W. COCKBURN, &c.

THE question was, Whether the office of King's Usher, or as it is called in writings Ostiarius, to which there is annexed a salary of L.200 sterling, which seems to have been in place of maintenance or living due to them for their attendants by the original grants, whether that office be adjudgable or affectable by creditors, and whether a judicial sale of it can be pursued by the creditors? After two hours reasoning it carried that this office was and is adjudgable. *Pro* were Justice-Clerk, Minto, Drummore, Haining, Dun, Balmerino, Monzie, and Tinwald. *Con.* were Kilkerran, President, Murkle, Leven, Arniston, *et ego*. Strichen did not vote.

No. 14. 1747, June 25. MARY GAINER *against* MR R. WALLACE.

IN this case we all agreed in finding it proved that he had vitiated the record of this Court, *i. e.* (the extract of our warrant to the Commissaries of Edinburgh, by changing

the words "two books" to "the books,") and had used that vitiated extract in the Commissary Court, and finding him liable to the complainer Mary Gainer's damages and expenses; but we greatly differed as to the punishment. I thought as this was done by a member of Court, we could do no less than deprive him of his office and debar him from agenting or managing processes. Others thought it was a great act of folly, and innocent, because he would probably have got a new warrant for the asking, and were therefore only for fining; others were for suspending him for this Session; others till Christmas; others for 12 months; some for fining him L.5, others for L.20 sterling;—and upon the vote we suspended him for 12 months, and fined him in L.20 sterling to the poors' box, *multum renit. inter alios* President *et me*, who were for depriving him altogether.

No. 15. 1747, July 1. JOHN AND JAMES MARSHALL *against* J. FERRIER.

MARSHALLS being sued by Nimmo for encroaching on his grass and theftuously putting their cattle into his inclosures, and concluding damages, fine, and punishment, Marshalls agreed by arbitration with Nimmo and paid him L.3 sterling. But then Ferrier the Bailie-substitute wanted to be satisfied, and said that if the libel were proved ten guineas would be too little. At last they agreed at seven guineas, whereof he gave back half a guinea. Marshalls complained summarily to us. We sustained the complaint, and on advising we found him guilty of extortion in his office, found him liable in damages, and declared him incapable of being a Judge.

No. 16. 1750, June 27. DUKE OF ROXBURGH *against* MR W. DICE.

IN an advocation from the Sheriff of Selkirk the question was, Whether titulars of teinds whose tithes are valued in the cess-books ought to pay any proportion of the schoolmaster's salary? The schoolmaster founded on the 17th act 1645, where the heritors are ordered to be assessed in these salaries in proportion to their rents in stock and teind, and the act 26th 1696. The Duke on the other hand founded on the act 5th 1633 and the said 26th act 1696. We passed the bill.

No. 17. 1750, Dec. 7. BOWER of Kinnettles *against* JAMES HAY, &c.

IN this case the President and I and some others thought there was sufficient evidence from the declarations of the parties, that James Hay was art and part of the unlawful combination to get curators to this boy Bower of Methie, (now carried to the Scots College at Paris by his aunt) chosen or named by Popish priests, in order to possess these or the College, or which was the same thing, the boy in that College, of the rents of the estate to be spent there, and to carry on the nomination so as his nearest friends particularly Kinnettles should not know of it. But Kilkerran, Justice-Clerk, and Drummore, thought the proof not sufficient, but thought him guilty of some imprudences and indiscretions, and therefore censurable; and we all agreed that he was censurable, and the Justice-Clerk moved the censure to be suspension for a year, and a fine, which to me seemed odd, considering his opinion on the first point; and on the vote it carried to suspend for a year and to fine in L.5.