

dain the said coat of arms to be recalled and expunged from the Lord Lyon's books, reserving to the said Thomas Dundas to apply for a new coat of arms, as accords: Find the defender Thomas Dundas of Fingask, and Thomas Dundas of Quanal, liable to the pursuer in the expense of the complaint before the Lord Lyon's court, and in the expense of this process of advocacy," &c.

And to this interlocutor the Lords adhered.

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1775. *January 18.* WILSON *against* JACKSON.

By a decision, 18th January 1775, *Wilson against Jackson*, the Lords found actions for usury concluding for annulling the debt, and for penalties, in terms of the Act of Queen Anne, competent before a Sheriff. See a former case, *M'Kelvie against Wallace*, 4 *New Coll.* p. 275.

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1775. *December 16.* MAXWELL *against* M'ARTHUR.

IN cases of petty riots, where an inferior Judge judges without a Jury, suspension is competent before the Session. So the Lords thought.

Adhered to in a reclaiming bill without answers, 18th January 1776. (See Form of Process.) The sentence was imprisonment, banishment from Gorbals, and whipping if they returned.

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By the Jurisdiction Act, all jurisdictions competent to royal burghs are saved to the burgh. It has been doubted whether this relates only to such jurisdictions as are ascertained to the burgh by the charter of erection, or to such also as are acquired by them *tanquam quilibet*. The Lords, in the case of the Gorbals of Glasgow, the Justiciary whereof had been purchased by the Town of Glasgow from Douglas of Blackerston, found that it comprehended the latter, 16th December 1775, *Procurator-Fiscal of Gorbals against Macarthur and Spouse*; adhered to 18th January 1776, on a reclaiming bill without answers.

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1776. *March* . JANET and JOHN DUFF *against* JOHN STEWART.

JANET Duff, and John her father, brought an action against John Stewart, to whom Janet alleged she was married, before the Sheriff of Perth, for aliment to Janet, furnished by her father, upon the principle that every husband is

bound to maintain his wife. The defence pleaded was a denial of the marriage; and consequently that, as the question resolved into a declarator of marriage, the Court was incompetent. The Sheriff ordered the defender to be examined, and thereupon, and production of marriage lines, decerned for the aliment. But, on an advocacy, the Lords passed the bill. They demurred greatly upon the point of jurisdiction, and thought, that, if modes of evading the jurisdiction of the Commissaries, as in this case, were allowed, it would tend to abolish the Commissary Court in one great article, and bring all questions of this sort before inferior judges; for, although cases often occur where a question, which is not in itself, *in prima instantia*, competent to be tried before a particular court, is yet the proper subject of determination when occurring incidentally; yet these cases are to be strictly interpreted; and, when plainly calculated to evade the proper jurisdiction, ought to be disallowed. See Law Tracts, Vol. I. p. 343.

1766.

MARTIN *against* WATT.

IN Summer Session 1766 a case came before the Court betwixt Martin and Watt, two custom-house officers, concerning the division of a seizure. The Sheriff of Haddington had given judgment in the merits; from him it came into Court by advocacy. The question as to competency having been suggested, the Lords ordered memorials; and, though both parties waved the declinature, the cause was dismissed, and found not competent. The Lords thought it was a revenue question, as originating from a revenue matter, and competent only before Exchequer. See ADVOCATION, *Forsyths against Shank*.

1771. February 13.

REID *against* GRAY.

By the charters of erection of the Town and territory of Kilmarnock into a burgh of barony, it is appointed that the Town Council present a leet of five of their own number to the baron at Michaelmas yearly, out of which the baron elects two bailies, and returns them to the Council; and, if the baron does not do this within a time certain, then they are chosen by the Council.

This being the set of Kilmarnock, a doubt arose how far the bailies were entitled to judge in any cause where the debt or damage exceeded forty shillings. In terms of the jurisdiction Act, and the point being stated in a cause before Lord Auchinleck, Ordinary, his Lordship found, "That the corporation or community of the burgh of Kilmarnock is independent of the baron; and, therefore, in a suspension of a decree of the bailies, he repelled the reasons of suspension." And, on advising a reclaiming petition with answers, the Lords adhered.

By the Jurisdiction Act, all jurisdiction is saved to burghs of barony which are independent of the baron. In the case of Kilmarnock, by grants from the