1675. *November* 20. WARDEN, Supplicant.

——— Warden, having given in a supplication for loosing of an arrestment laid on by one Barry upon a decreet, upon this reason, That albeit, ordinarily, that arrestments laid on upon decreets are not loosable upon caution, yet here the decreet was suspended before laying on of the arrestment; by which it became not to be a liquid sentence, but became a dependence. Which the Lords sustained; and the arrestment to be loosed upon caution.

Vol. II, Page 372.

1675. *December* 3. ROBERT ARBUTHNOT *against* HENRY BARCLAY.

ROBERT Arbuthnot pursues declarator of the escheat and liferent of Colonel Henry Barclay; in which pursuit this defence was found relevant, That the Colonel was relaxed, within the year, at the head burgh of the shire where he dwells, and the relaxation registrate. The act being called in the Outer-house, and the term craved to be circumduced, the Colonel produced a relaxation at the cross of Edinburgh, registrate there, and another relaxation at the cross of Mernes, where he dwells, but not registrate there. The pursuer alleged, That this production could not stop certification, because it satisfied not the desire of the act, requiring a relaxation at the cross where the defender dwelt, duly registrate. The defender answered, That he produced writs *ad modum probationis*, and referred the same to be advised by the Lords, whether proven or not proven; which could only be done *in præsentia*, and not in the Outer-house. The pursuer replied, That, albeit the sufficiency of the probation was only competent to the whole Lords, where there could any doubt arise, yet, as in other cases, so in this, where the matter was clear, the Ordinary might determine; otherwise the production of any writ, though nothing relating to the matter in question, would stop the circumduction of all acts probable by writ, and put them to the delay of coming in by the roll of concluded causes, to their great delay and detriment. The defender duplied, That it was free for him to debate *in præsentia*, whether he had proven sufficiently *ad victoriam causæ*, though not all that the act required. And here he would instruct, that he had proven sufficiently, because he had produced his relaxation, to the keeper of the register, *debito tempore*, which behoved to supply the registration; in which case the Ordinary could not judge. The Lords found, That writs not relative to the matters in question could not stop the certification; but that thir writs, relating to the matter contained in the act, and having any doubtfulness, behoved to stop the certification, and come in as a concluded cause.

Vol. II, Page 374.

1675. *December* 10. GEORGE KEITH *against* DAVID MURRAY.

GEORGE Keith pursues David Murray for wrongous intromission with fifty-

nine barrels of salt, left in the custody and cellars of Patrick Trail, in Kirkwall, by Captain Keith, and by him disponed to the pursuer. The defender alleged Absolvitor; because he, being collector of the customs in Orkney, had warrantably seized upon this salt, because there was no entry made of the ship that imported it.

It was ANSWERED, That the pursuer's author was *in bona fide* to buy the salt, seeing bulk was broken, and parcels sold to the defender himself, and many others.

It was REPLIED, That it is not the breaking of the bulk, but the not making of entry before bulk broken, that warrants the collectors to make seizure; neither did the defender give warrant to break bulk; but, on the contrary, offers him to prove, that, he being in Zetland, and the ship coming there, being *in* distress for want of vivers, and having no money to buy, and there being there no port to enter, did consent for the sale of ten barrels of salt, for the company's necessity, and sent a certificate to the customers at Kirkwall, that, accordingly, entry might be made there; which not being made, he did warrantably seize upon the salt in question.

Which the Lords found relevant.

Vol. II, Page 379.

1675. *December* 15. The WRIGHTS and MASONS of EDINBURGH *against* The COOPERS, BOWERS, GLAZIERS, SLATERS, PAINTERS, PLUMBERS, and WHEELWRIGHTS of EDINBURGH.

THE wrights and masons of Edinburgh came to join in one society, upon occasion of an altar dedicated to St John, in the kirk of St Giles, for the light thereof, and other expenses thereanent, wherein they did concur in contributing; and thereafter have to this day continued in one incorporation; and had granted them, by the council of Edinburgh, power to make orders for ruling their trades, which are confirmed by King James the Fifth, King James the Sixth, and by King Charles the First and Second. There were also like privileges granted to the coopers; and they, the bowers, glaziers, and slaters, have been associated with the wrights and masons; and all of them have voted in concerns of all these trades, from the year 1572, as appears by their books, beginning that year, and continuing till now: but there is nothing else to show the time or terms of their incorporation; and particularly the admission of their masters of the several trades, their box-master that keeps the money of their whole society, or in the election of deacons, of wrights and masons preceding in the first place, and other trades subsequent. *In anno* 1583, there being a difference betwixt the merchants of Edinburgh on the one part, and the trades on the other, anent their interests in the magistracy, they both submitted to the arbitrament of King James the Sixth, who, with advice of some of the statesmen and lawyers for the time, gave his decreet-arbitral, commonly called *the sett;* by which he determines,—That there shall be only fourteen crafts who shall have power to choose deacons, *viz.* wrights, masons, &c.; of which deacons, eight shall be upon the ordinary council, and the whole fourteen in matters of special importance, expressed in the sett; and, for the annual election of these deacons, the council