

bert Burnet, writer to the signet, of a disposition imputed from her uncle, as granted *in lecto*,—he having objected against her title, that there was a nearer heir, and she offering to prove he was abroad, and an act of litiscontestation having been extracted thereon, and witnesses examined on a commission; but the same not being yet come in by the course of the roll, she, for abridging her process, craved Robert's oath of calumny, if he could deny that he knew he was dead. It came to be a debate among the Lords, If he was obliged now to give his oath, she having neglected to crave it when he first proponed the allegiance. Some thought an oath of calumny may be sought in any part of the process, before sentence, *ad lites amputandas*. And Hope, *Prac. tit. Of Oaths of Calumny*, seems to be of this opinion; though he says *olim* it could not be sought after probation. Others argued, Having elected the manner of probation by witnesses, she could not recur to his oath of verity, if the probation be either affirmative or negative; *ergo, multo minus* seek an oath of calumny; and that it was, the last session, refused in *Fotheringham's case* against the *Earl of Home*.

The Lords looked on the case as of general importance, and desired to be fully informed before they proceeded to a decision therein.

See Dury, 15th July 1622, *Rosline*.

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1695. November 14. MR MATTHEW CAMPBELL of WATERHAUGH *against* His CREDITORS.

MR Matthew Campbell of Waterhaugh, one of the forfeited persons in the late times, being imprisoned for the payment of some arrears of a life-rent-anuity due out of his lands, he presented a suspension and charge to be put at liberty on the *supersedere* contained in the 16th Act of Parliament 1695, suspending all personal execution against persons in his circumstances till Whitsunday 1696.

The Lords, having read the clause of that act, found it related only to debts where there was a principal sum and annualrents; and did not extend to this case, where there was no *sors*; and so, being *lex correctoria et a jure communi exorbitans*, it could not be drawn *de casu in casum*; and therefore refused the bill.

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1695. November 19. ROBERT DOUGLASS, Younger, *against* BAILIE CUNNINGHAM and OTHERS.

IN the bill of suspension given in by Robert Douglass, younger, soap-boiler in Leith, against Bailie Cunningham and others, of a decret of the Magistrates of Edinburgh, as justices of the peace, fining him in £100 Scots for opprobrious language against the Magistrates, and particularly against the said Bailie Cunningham, and ordaining him to give bond not to defame or trouble any of the Magistrates, under the pain of £50 sterling;—and he complaining that he was refused a sight of the libel, and that he could not, by a narrative they had

inserted in the draught of a bond required of him, acknowledge a guilt which he denied ; and that he was not bound to depone upon such injurious expressions, and so could not be holden as confessed thereon ; and that the Magistrates, by their answers, had passed from the fine, and so could not now insist for it ;—the Lords thought justices of the peace were not tied to the forms of other courts but in petty riots ; and, for vindicating their own jurisdiction, they might proceed *de plano, sine strepitu et figura judicii* ; and that citizens were not to be enraged against their Magistrates ; and, on the other hand, they are not to be armed with too much power to oppress their burghesses. Therefore they ordained the bond to narrate his faults as a part of the decreet pronounced against him, and not as his confession ; and did not allow the Magistrates to retract their offer of passing from the fine on his subscribing a bond ; and restricted the penalty to £100 Scots ; and, on his granting such a bond, ordained him to be set at liberty.

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1695. *November 19.* The INHABITANTS of LEITH *against* The MAGISTRATES of EDINBURGH.

A BILL of suspension was given in by the Inhabitants of Leith, against the Magistrates of Edinburgh, of an unjust quota and proportion of cess laid upon them for their houses and trades, to relieve Edinburgh *pro tanto* ; and, to facilitate the passing of their suspension, they also raised a declarator of their privileges and exemption from any such illegal impositions, and that they ought to pay only for their ground, and be stented and assessed with the shire ; and could not relieve Edinburgh of any share of their quota, unless they would allow them to be a royal burgh, (for which they had once an erection in Queen Mary's regency ; ) or else give them a participation of trade ; which, by the 31st Act of Parliament 1693, is communicated to burghs of barony and regality.

ANSWERED,—The Town of Edinburgh, in paying all their public burdens, not only assessed the royalty, but all their dependencies, and Leith amongst the rest ; and it is so provided by the 14th Act of Parliament 1661, dividing the excise amongst the several shires and burghs ; and the Canongate might as well plead immunity as Leith ; and, at this rate, the payment of the King's cess may be altogether stopped and disappointed.

The Lords, considering that, for many years bygone, Leith had borne a part of the Town of Edinburgh's quota, and if the inhabitants of Leith were grieved, they might get retention or redress in subsequent terms' cess not yet fallen due, and to stop the custom might create confusion ;—they refused the Town of Leith's bill of suspension, but prejudice to them to insist in their declarator, as accords ; and would not summarily invert the Town of Edinburgh's possession.

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1695. *November 20.* BAIRDNER of CULTMILN *against* The LORD COLVIL and OTHERS.

IN the action pursued by Bairdner of Cultmiln, against the Lord Colvil and