

thereon, and first required Patrick Duncan, messenger in Falkland, and then Andrew Byres, messenger in Coupar, to take him, they refused, at least declined the same, as unwilling to offend their master; whereupon he had taken instruments against them; and, having no other remedy left, gave in a bill to the Lords, representing the foresaid matter of fact, and that it was of dangerous consequence to all the lieges if the execution of justice were this way stopt; therefore craving a summary warrant to cite them, that they and their cautioners may be decerned to pay him his damage, being the sum charged for, because of their contempt and disobedience, and that the Lords may deprive them of their offices for their malversation.

The thing was looked upon as an ill preparative and example; and it being suggested, that, though we deprived, yet he would admit and license them of new; but it was thought he would subject himself to farther censure if he thus attempted to evacuate the Lords' sentence of deprivation. The next inspection that occurred was, How this sentence could be so intimated and published that it might come to the lieges' knowledge, for, without that, they were *in bona fide* to employ them still; and their executions, though deprived, would subsist as valid, being holden and reputed by the law; *Barbarius Philippus, D. de Offic. Prætor.* where a slave being elected prætor, his actions and edicts were sustained *ob bonum publicum*. Some thought the deprivation behoved to be published at the market-cross where they officiate, and likewise recorded in the Lyon's books.

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1705. *January 13.* MACMILLAN and CARSE *against* JOHN MACFARLANE.

AT the same time a parallel case, about publications, was decided betwixt John Macfarlane, writer to the signet, and Macmillan and Carse. They pursued him for a debt, and, referring it to oath, during the dependence they raised and executed an inhibition against him, he having deponed *negativè*; and, coming to be advised, he was assoilyied; and, finding the pursuit calumnious, the Lords modified £50 of expenses; but, the inhibition being registrate, for taking off the effect of that, (seeing records may not be vitiated or altered,) it was thought the keeper might be authorised to write on the margin that the party was assoilyied, by a decret of the Lords, from the dependence and ground of the said inhibition. But, seeing they ought to insert nothing but what is proven, therefore it might be likewise fit that the said John Macfarlane should likewise registrate the decret-absolvitor in the said books, though they are not appointed for decreets, but only for seasines and inhibitions.

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1705. *January 16.* LIEUTENANT JOHN CREICHTON *against* The EARL of EGLINGTON.

THE Earl being debtor to Mr Hugh Montgomery, his brother, in the sum of 2000 merks, by bond, in January 1689, Mr Hugh assigns this to John Creich-