

1706. *February 12.* The VISCOUNTESS of OXFORD and OTHERS *against* SIR JAMES DALRYMPLE of KILLOCH.

LORD Prestonhall reported the bill of advocation by the Viscountess of Oxford and Others against Sir James Dalrymple of Killoch. Sir James Dalrymple having bought the barony of Cousland, from Robert, last Viscount of Oxford, in 1699, the disposition bears a clause disposing to him the seats, desks, and aisle in the kirk of Cranston, belonging to the barony of Cousland; and Sir James, in October last, offering to take possession, he was debarred, *manu forti*, by some of my Lord's tenants, gathered by John Irving the bailie, for that purpose. And thereon Sir James pursues them before the Sheriff of Mid-Lothian for a riot and intrusion; wherein my Lord, and, after his decease, Lady Christian his daughter, and Mr William Maitland her husband, compeared for defending the tenants; and

ALLEGED,---That no more was designed by that clause but only that the tenants of Cousland were to sit on the back-seats as they were in use to do before, but nowise to give away the fore-seat, which was without the aisle disposed, and within the body of the kirk. *2do*, The sheriff was incompetent; this dipping upon property, and a competition of rights, to which the Lords were only proper judges. *3tio*, What the tenants did was by their master's warrant, and so they ought to be assoilyied.

ANSWERED to the *first*,---The clause is opposed, disposing the whole seats without any reservation; *et qui omne dicit, nihil excipit*. To the *second*, The Viscount had prorogated the jurisdiction by proponing peremptory defences; and, it being a riot, it was more proper for the sheriffs *in prima instantia*, who have a mixed jurisdiction, partly criminal and partly civil. To the *third*, wrong could have no warrant.

The sheriff having repelled thir defences, and admitted the libel to probation, there is a bill of advocation given in by the Viscountess and her husband, for her tenants, upon incompetency and inquiry. But the Lords refused the bill, and remitted it back to the sheriff; and, if there were any ground, they might be heard by way of suspension.

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1706. *February 12.* The TOWN of EDINBURGH and JAMES MURRAY *against* The EARL of CROMARTY, ROBERT BLACKWOOD, JAMES BALFOUR, and ALEXANDER AINSLIE.

LORD Register reported the Town of Edinburgh, and James Murray their tacksman, against the Earl of Cromarty, Mr Robert Blackwood, James Balfour, and Alexander Ainslie, owners and masters of the glass manufactory at Leith. The Town of Edinburgh have, by their most ancient charters, right to the shore-dues at their port and harbour, for repairing and upholding the pier; and, by a gift from King Charles I, in 1636, ratified in the Parliament 1661, they have right to exact a merk per ton, of all foreign goods imported at Leith. And