

1803. *January 20.*PRINCIPAL CLERKS of SESSION *against* CLERKS of the BILLS.

No 387.
Interlocutors upon reports from the Bill Chamber are to be written by the Clerk of the Bills, and signed, not by the Lord President, but by the Lord Ordinary.

IN the case of Jean Farquharson against Anderson of Candacraig, a question arose, Whether the interlocutor should be signed by the Lord President, or by the Lord Ordinary on the Bills? There was no formal interlocutor pronounced. But the Court, upon considering a memorandum, answers, and observes, for the Principal Clerks of Session and Clerks of the Bills, were of opinion, that, when the Lord Ordinary on the Bills reported a case from the Bill Chamber, upon memorials or informations; the cause still remained before his Lordship, and, of course, the interlocutor upon such a report should be written by the Clerk of the Bills, and signed by the Lord Ordinary, after advising with the Lords; or, in other words, that a cause could not be brought into the Inner-house from the Bill Chamber by avisandum, but only by a petition reclaiming against an interlocutor of the Lord Ordinary upon the Bills.

J.

Fac. Col. No 78. p. 174.

S E C T. XXII.

Form of Process in *Criminalibus*.1715. *July 19.*THE PROCURATOR-FISCAL of the Regality of COUPAR *against* SIMPSON.

No 388.
Proof of a crime cannot be led in absence.

SIMPSON being charged upon a decret obtained at the instance of the Procurator-fiscal, for the penalties imposed by law in using lime in bleaching of linen cloth, and for a bloodwit; he suspended on these reasons; *1mo*, The transgression in bleaching the cloth was his wife's fault, and not his, for which he could not be liable; *2do*, As to the bloodwit, the sentence was pronounced upon a probation led in absence; whereas, in complaints for crimes, the Bailie could only have fined him for contumacy, and granted warrant to apprehend him till he should find caution to appear personally.

It was *answered* to the *first*; That whatever defence may be competent to husbands, that they cannot be liable for penalties incurred by their wives in other cases, yet if husbands were not liable for their wives' transgressions, by undue bleaching of linen cloth, the law would be altogether eluded; because women only are employed in bleaching, whereof their husbands have the bene-

fit, whether for sale, or for their proper use, and in effect wives are trusted by their husbands, and *præpositæ* for that particular management. And as to the *second*, It is the ordinary practice to lead probation, even in absence of the parties, in small scuffles where bloodwits happen.

No 388.

“THE LORDS found the husband liable; but suspended the decret for the bloodwit; and found that probation ought not to be led in absence; and that the Bailie ought only to have unlauded the suspender, and granted a warrant to apprehend him until he found caution.”

Fol. Dic. v. 2. p. 210. Dalrymple, No 149. p. 205.

S E C T. XXIII.

What Actions competent.

1662. *January 24.* LAIRD OF RENTOUN *against* MR MARK KERR.

THE LAIRD of Rentoun having obtained decret before the Commissaries of Berwick against Mr Mark Kerr, compearing for three chalders of victual of teind, Mr Mark suspends upon iniquity; because he having proponed a relevant defence, that he ought to have allowance of the annuity which he had paid, which affected the teinds, it was repelled. The charger *answered, Non relevat*, by way of suspension, without there were a reduction. The suspender *answered*, The reason was instantly verified, by inspection of the decret.

THE LORDS found the reason not competent by suspension without reduction.

Stair, v. 1. p. 87.

No 389.
Not competent to suspend a decree upon the head of iniquity.

1750. *July 26.* BUCHANAN *against* URE.

THERE being an advocation sought of a cause depending before the Sheriff of Stirling, betwixt George Buchanan, tenant in Dunbrock, and James Ure, tenant in Haltoun of Balgair, for a less sum than L. 12 Sterling; the Lord Ordinary had remitted with an instruction; but the matter being brought by bill and answers before the Lords, they were of opinion, this cause could neither be

No 390.
A cause below L. 12 Sterling cannot be advocated, nor any instruction given in the remit.