without assythment, the method prescribed for recovering was not by a civil action, but by trying him for the crime. And on the first point I observed, that the act of grace, which was certainly intended as wide as the *cessio*, yet is expressly limited to civil debts. 19th November Adhered, and refused a bill without answers unanimously. I was in the Outer-House.

No. 10. 1752, Feb. 20. JOHN DRYSDALE, *Supplicant.*

THE petitioner had pursued a *cessio bonorum*, and upon the proof it appeared by his own shewing, that his breaking was owing chiefly to his smuggling, and sundry seizures made of his goods. He produced sundry certificates of his honesty, and prayed to dispense with the dyvours habit, which we are but too apt to do, even contrary to our own act of sederunt 1688, and to the act of Parliament 1696. But as several of us thought the breaking by smuggling could no more be called breaking by misfortune, as the act 1696 expresses it, or by innocent misfortunes, as our act 1688 expresses it, no more than if it were by gaming, and as this smuggling trade is ruinous to the country, we opposed dispensing with the habit; and upon the question it carried by a great majority not to dispense with it. As I think, Lord Dun and Drummore, (who was in the chair) continued against the interlocutor; for some who spoke for dispensing with the habit, in the end voted for the interlocutor.

PRIVILEGE.

No. 1. 1736, Feb. 5. YOUNG, Constable, *against* BRIGADIER MOYL.

THE Lords adhered to the Ordinary's interlocutor, repelling the declinatory defence, that the Officers of State and inhabitants of Calton were not called, but remitted to the Ordinary to hear the petitioner *in causa, me et quibusdam aliis renitentibus*, who thought that this not being a complaint for any particular rout or quartering, but a general declarator of the pursuer's exemption from quartering, the Officers of State ought to be called,—22d July 1785.

The Lords seemed generally of opinion, that the act confining quartering of soldiers to burghs royal or regality, or market towns, included suburbs as well as burghs properly so called, and therefore would include Calton, Potterrow, Portsburgh, &c. But the question was, If Abbeyhill was to be deemed a suburb, at least of Canongate? Some thought that that was in the property of private persons, and not of the burgh, and could not be called suburbs (of this opinion was Dun,) but then none of the above places would have been suburbs till they were purchased of the town of Edinburgh. Others thought it no suburb because of the distance, which the law has not defined, and is arbitrary; and it carried that soldiers could not be quartered in Abbeyhill, *renit.* Royston, Justice-Clerk, *me, et aliis,*—5th February 1736.

. The like question was stirred (10th February 1744) as we determined 5th February 1730, with respect to the Abbeyhill's being free from local quartering of soldiers; and because of the Calton's contiguity to Canongate and Edinburgh, we unanimously found the Calton not exeemed, and assoilzied from that part of the declarator. 7th June 1745, Adhered.

No. 2. 1741, Nov. 24. Inhabitants of Orkney *against* Shetland.

Some days ago on a report by the Ordinary on the bills, we found that hornings against inhabitants of Orkney and Shetland could not pass on less than 40 days by act 43d 1685, even on the Stewart of Orkney's decreets, because still the horning was by warrant of this Court;—and this day we found, that notwithstanding the act 1681 anent foreign bills of exchange extended to inland bills by the act 1696, the horning even on inland bills against the inhabitants of that country might not pass on less than 40 days.

No. 3. 1741, Dec. 8. Creditors of the Earl of Hume.

In a maills or duties, or some such process, concerning the Earl of Hume's estate, Drummore reported to us whether the competition may go on betwixt the creditors, notwithstanding privilege of Earl Hume?—and by a great majority it carried that the process must stop during the Earl's privilege, even as to the competition among the creditors. On this occasion the President told us, that by the practice in England, privilege could not be pleaded nor allowed without a writ of privilege under the Great Seal. But Arniston told us he had enquired into that matter; that writs of privilege have been in disuse for a long time, I believe 100 years, but now when privilege was pleaded, it is enough to produce in Court the return, or a certificate from the Crown-office of his being returned; but in the case of a Peer that is not necessary. But as this is the case of a Scots Peer who has no privilege but by being elected, and as the return of that election is made to the Crown-office, as that of the Commons is, it would seem that the same evidence of the election would be necessary here as in the other case.

No. 4. 1741, Dec. 17. Reid *against* Balfour and Others.

The Lords found that the Magistrates could not authorize Scott and Balfour, &c. to erect a stage coach, with exclusive privilege, and therefore suspended their sentence prohibiting Reid.

No. 5. 1743, Nov. 24. Guildry of Dunfermline *against* The Trades.

We, 21st January, seemed all to agree that by law no craftsman can sell or retail any wares, even Scots, in burgh, without being guild-brother. 2dly, That the contract 1618 is effectual in Dunfermline, and they may retail Scots wares, but not foreign wares;—and we seemed to agree that a craftsman could not keep a shop for retailing wine to be drunk out of his house; but Arniston thought he might keep an ordinary, and sell either meat or