

No. 23. 1741, June 17. *BARBARA NEWLANDS against NEWLANDS, &c.*

UPON a complaint of subornation of perjury for the said Barbara against Newlands and Roy, the Lords having given summary warrant to apprehend, on which Roy was taken, but Newlands not being bound, they granted warrant to charge him to compear before them under the pain of Rebellion and putting him to the horn ;—and now a petition in his name and his factor's complaining of that order as unprecedented and even beyond our power and craving to be heard, being presented, the Lords called the cause, heard the parties what further they had to say, and then refused the bill.

No. 24. 1741, June 23. *PROCURATOR-FISCAL of the JUSTICES of HADDINGTON.*

THE first question was the pursuer's title to pursue, which depended on the Justices' competency to this act of Parliament. Several thought the Justices competent to stop building pigeon-houses against law as nuisances on the act 6<sup>to</sup> *Annæ*. But after the proprietors have possessed for many years, they thought the Justices no proper judges, and so they found ; and therefore dismissed the process.

No. 25. 1741, July 2. *ORD and FOORD against ROBERTSON.*

THE Lords having fined Orr of Barrowfield in L.50 sterling for an oppressive imprisonment, as a Baron and Baron Bailie, of Robertson, the Lords adhered, and refused without answers.

No. 26. 1742, Feb. 26. *MASTER OF THE MINT against F. STUART, &c.*

THE Lords pretty unanimously found that we had no jurisdiction in this process against the Master of the Mint who had received sums from the Crown by way of imprest and to account ; and that notwithstanding the former judgment in this very process against Lord Belhaven, and of the Ordinary's interlocutor not complained of in due time ; and we thought that we could not be concluded by these regulations where we had no jurisdiction,—nobody opposing but Dun the Ordinary. But the President, Arniston, and I, were clear.—5th June Adhered, and refused a bill without answers.

No. 27. 1742, July 24. *SKIPPERS OF IRVINE against HAMILTON.*

As to importers of Irish victual, we seemed to agree that the penalties of L.100 sterling mentioned in the acts 1672 and 1686, for which bonds were to be granted, takes no place in this case, and I believe in no case, but three questions occurred, first, Whether the punishment of fine and imprisonment as well as transportation are not confined to two months? 2dly, Whether proveable by oath? 3dly, Whether the punishment of fine and imprisonment be at all committed to inferior Judges,—and a hearing was appointed this day se'ennight.—26th June 1741. *Vide* 3d July.

The Court seemed to agree, that whatever jurisdiction was by the act 1703 committed to the Judge Ordinary with respect either to fining, imprisonment, or transportation, that the conviction is limited to six months from the delinquency; 2dly, They seemed to think that by the act 1672 the inferior Judges might seize and confiscate. But the great difficulty was, Whether the Ordinary Judge could by the act 1672 fine and imprison? and if they could not, but only the Council, Whether that power was extended to them by the act 1703? and upon the whole superseded for three weeks, and recommended to search for the proclamations of Council before 1672 or 1703; and afterwards 28th July such an act in 1668 was produced. The Court seemed to agree that the punishment committed to the Council by the act 1672 was not transferred to the Judge Ordinary, but they found that by common law the Judge Ordinary could execute these laws.

This case marked 3d July. I have marked also what was done in Court, 28th July. 2dly, As the Court found that this act 1703 gave no new jurisdiction except as to the punishment by transportation of unlanded men, we found that none of the other penalties were limited to six months, and that it was no defence against these other penalties, and found it not proveable by oath of party. 5th June 1742 Altered, and found proveable by oath of party by the President's casting vote. *Pro* were Mihto, Drummore, Kilkerran, Balmerino, Monzie, *et ego*. *Con.* were Royston, Justice-Clerk, Haining, Strichen, Dun, Leven. Adhered as to the prescription. 24th July, Adhered, and refused a bill without answers.

No. 28. 1744, Feb. 11. COMMISSARY CLERKS *against* PRINGLE.

THE Lords after much disputing, found that the proof must be transmitted here without extracting.—N. B. There was no summons of reduction before the Commissaries.

No. 30. 1744, July 17. SHERIFFS-DEPUTE OF EDINBURGH, *Supplicants*.

ON the death of Earl of Lauderdale, Sheriff-principal, Mr Linn and Mr Sandiland, Deputies, petitioned the Court to authorize them to continue in their offices till the King name another, which we granted as we had done in the case of Renfrew on Earl of Eglinton's death, and I believe also in Caithness on Ulbster's death, and Earl of Breadalbane being abroad. *Vide* Fountainhall's Copy Acts of Sederunt, 16th February 1561.

No. 31. 1744, July 20. MESSENGERS OF EDINBURGH *against* DRUMMOND.

THE Lyon having given a commission as a messenger to Drummond, two messengers in Edinburgh presented a suspension, first, that there were already 24 messengers of the shire of Edinburgh, including the Lyon, Heralds, and Pursuivants, in terms of the act 46th Parl. 11, James II. 2dly, That Drummond is of bad character and guilty of bad practices. The Lyon objected to the jurisdiction; 2dly, That the Lyon, Heralds, &c. are no part of the 24, and besides them there are but 16; and 3dly, Disputed the facts mentioned in the second. We agreed that the bill was competent upon the first, but then the reason was not true. As to the rest we thought the first application should have been first to the Lord Lyon; and therefore refused the bill, but prejudice of applying to the Lyon and his Court.