

the words "two books" to "the books,") and had used that vitiated extract in the Commissary Court, and finding him liable to the complainer Mary Gainer's damages and expenses; but we greatly differed as to the punishment. I thought as this was done by a member of Court, we could do no less than deprive him of his office and debar him from agenting or managing processes. Others thought it was a great act of folly, and innocent, because he would probably have got a new warrant for the asking, and were therefore only for fining; others were for suspending him for this Session; others till Christmas; others for 12 months; some for fining him L.5, others for L.20 sterling;—and upon the vote we suspended him for 12 months, and fined him in L.20 sterling to the poors' box, *multum renit. inter alios* President *et me*, who were for depriving him altogether.

No. 15. 1747, July 1. JOHN AND JAMES MARSHALL *against* J. FERRIER.

MARSHALLS being sued by Nimmo for encroaching on his grass and theftuously putting their cattle into his inclosures, and concluding damages, fine, and punishment, Marshalls agreed by arbitration with Nimmo and paid him L.3 sterling. But then Ferrier the Bailie-substitute wanted to be satisfied, and said that if the libel were proved ten guineas would be too little. At last they agreed at seven guineas, whereof he gave back half a guinea. Marshalls complained summarily to us. We sustained the complaint, and on advising we found him guilty of extortion in his office, found him liable in damages, and declared him incapable of being a Judge.

No. 16. 1750, June 27. DUKE OF ROXBURGH *against* MR W. DICE.

IN an advocation from the Sheriff of Selkirk the question was, Whether titulars of teinds whose tithes are valued in the cess-books ought to pay any proportion of the schoolmaster's salary? The schoolmaster founded on the 17th act 1645, where the heritors are ordered to be assessed in these salaries in proportion to their rents in stock and teind, and the act 26th 1696. The Duke on the other hand founded on the act 5th 1633 and the said 26th act 1696. We passed the bill.

No. 17. 1750, Dec. 7. BOWER of Kinnettles *against* JAMES HAY, &c.

IN this case the President and I and some others thought there was sufficient evidence from the declarations of the parties, that James Hay was art and part of the unlawful combination to get curators to this boy Bower of Methie, (now carried to the Scots College at Paris by his aunt) chosen or named by Popish priests, in order to possess these or the College, or which was the same thing, the boy in that College, of the rents of the estate to be spent there, and to carry on the nomination so as his nearest friends particularly Kinnettles should not know of it. But Kilkerran, Justice-Clerk, and Drummore, thought the proof not sufficient, but thought him guilty of some imprudences and indiscretions, and therefore censurable; and we all agreed that he was censurable, and the Justice-Clerk moved the censure to be suspension for a year, and a fine, which to me seemed odd, considering his opinion on the first point; and on the vote it carried to suspend for a year and to fine in L.5.