

The Lords, on advising a reclaiming petition and answers, 4th December 1776, adhered to the interlocutor of the Ordinary, and refused the petition, except as to the fees exigible on matriculations; as to which, remitted to the Ordinary to hear parties further, and to do as he should see cause.

In reasoning, the Lords made a distinction betwixt a right to wear arms and matriculation. In the *first*, immemorial possession would presume a grant even from the Sovereign himself to wear them; and many families in Scotland had right to arms before the Act 1592; so did not derive right to wear them from the Lyon in virtue of that Act of Parliament. But, as to matriculation, in consequence of the Act 1672, that was requisite in every case, and is so found by the Ordinary in this case. The fees, no doubt, are fixed by the Act 1672, but Lord President thought that, as in other regulations of fees about that period, practice and change of times had introduced an alteration; so this might be the case here, and therefore he proposed to remit that point to the Ordinary to hear further; which was agreed to.

20th December 1776, the Lords refused a reclaiming petition without answers, and adhered.

And again, 25th June 1778, the Lords, on report of Lord Hailes, found that the Lyon can exact no higher fees for Mr Murray of Touchadam's arms than ten merks, being the fees exigible by the statute 1672 from a baron; and found the Lyon liable in the expense of process prior to the last remit, and of the whole extract of the decret. They thought the plea, so far as concerned the matriculation-fees, not improper; as the statute was so ancient, and the practice for at least twenty years against it, though not uniform. But, as to the former parts of the process concerning Mr Murray's right to arms, and the jurisdiction of the Lyon, they thought them unjustifiable, and that the Lyon was liable in the expenses incurred on that account; and, 9th July 1778, they refused a reclaiming petition without answers, and adhered.

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1762. *January 22.* DUNDAS of DUNDAS *against* DUNDAS of FINGASK.

THE Laird of Dundas complained to the Lyon, That Dundas of Fingask had got from the Lyon's predecessor, in the year 1744, a grant of an armorial bearing, to which he and his predecessor had right many ages before. The matter was brought before the Lords by an advocacy at the instance of Fingask. Dundas disputed the competency; but this plea was soon abandoned, and on the merits the Lords, 22d January 1762 pronounced this interlocutor:—

“ Finds, That George Dundas of Dundas, heir-male of James Dundas of that ilk, who was forfeited in the year 1449, but afterwards rehabilitate, has the sole right to use and bear the coat of arms belonging to Dundas of that ilk, as matriculated in the register, authenticated by the subscription of Sir James Balfour then Lord Lyon; and find, That the coat of arms obtained in the 1744, by Thomas Dundas, defender, from the late Lord Lyon, was obtained by obreption, and that he has no right to use the same; and therefore or-

dain the said coat of arms to be recalled and expunged from the Lord Lyon's books, reserving to the said Thomas Dundas to apply for a new coat of arms, as accords: Find the defender Thomas Dundas of Fingask, and Thomas Dundas of Quanal, liable to the pursuer in the expense of the complaint before the Lord Lyon's court, and in the expense of this process of advocacy," &c.

And to this interlocutor the Lords adhered.

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1775. *January 18.* WILSON *against* JACKSON.

By a decision, 18th January 1775, *Wilson against Jackson*, the Lords found actions for usury concluding for annulling the debt, and for penalties, in terms of the Act of Queen Anne, competent before a Sheriff. See a former case, *M'Kelvie against Wallace*, 4 *New Coll.* p. 275.

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1775. *December 16.* MAXWELL *against* M'ARTHUR.

IN cases of petty riots, where an inferior Judge judges without a Jury, suspension is competent before the Session. So the Lords thought.

Adhered to in a reclaiming bill without answers, 18th January 1776. (See Form of Process.) The sentence was imprisonment, banishment from Gorbals, and whipping if they returned.

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By the Jurisdiction Act, all jurisdictions competent to royal burghs are saved to the burgh. It has been doubted whether this relates only to such jurisdictions as are ascertained to the burgh by the charter of erection, or to such also as are acquired by them *tanquam quilibet*. The Lords, in the case of the Gorbals of Glasgow, the Justiciary whereof had been purchased by the Town of Glasgow from Douglas of Blackerston, found that it comprehended the latter, 16th December 1775, *Procurator-Fiscal of Gorbals against Macarthur and Spouse*; adhered to 18th January 1776, on a reclaiming bill without answers.

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1776. *March* . JANET and JOHN DUFF *against* JOHN STEWART.

JANET Duff, and John her father, brought an action against John Stewart, to whom Janet alleged she was married, before the Sheriff of Perth, for aliment to Janet, furnished by her father, upon the principle that every husband is