

The defenders denied the maltreatment, and maintained, that the prompt execution of the Justice's decret was authorised by the 12th Car. II. referred to in the 16th and 27th Geo. II. which regulated the mode of diligence and execution in excise matters. By the writ of assistance introduced by the 14th Car. II. c. 5. they were authorised to enter any house whatever as to which they had suspicion; and being legally within the house, in virtue of that writ, they were then entitled to proceed with and execute the pouding. Though they were not therefore possessed of letters of open doors, which would have been granted of course, they were, by means of this writ, possessed of a sufficient legal authority for the same purpose.

The following judgment was given: "Find, That the defenders, John M'Farlane and James Cargill, acted in an illegal, riotous, and irregular manner; and therefore find them liable in damages and expenses."

Lord Ordinary, *Barjarg.*

For Sinclair, *Crosbie.*

Clerk, *Gibson.*

For M'Farlane and Cargill, *Sol. H. Dundas.*

R. H.

Fac. Col. No 47. p. 135.

1787. February 14.

MASON against THOM.

No 55.

WILLIAM THOM was entrusted with a bill of exchange accepted in favour of Mason, 'for the purpose of doing such diligence as to put the drawer on an equal footing with the other creditors.' He used inhibition on the ground of debt, but as he neglected to adjudge, no part of the money was recovered. THE LORDS found him liable in a sum equal to what the pursuer would have received had an adjudication been led.

Fol. Dic. v. 4. p. 233.

*** This case is No 68. p. 3535., *voce* DILIGENCE.

1798. February 6. INNES against MAGISTRATES of Edinburgh.

No 56.

A PERSON receiving a material injury from falling, during the night, into a temporary pit made in one of the lanes of a burgh, found entitled to damages from the Magistrates, although a considerable degree of precaution had been used by those who dug the pit, to prevent such accidents.

Fac. Col.

*** This case is No 31. p. 13189, *voce* PUBLIC POLICE.