

by it was found and declared, that if any person, ather persewer or defender, schall happen to slay or wound to the effusion of blood, or utherswise to invade ane of them ane uther in any sorte, quhairupon they might be criminally accused, after the raising of the summondes and precepts, and lauchfull execution thereof, or in any time before the compleit execution to be recovered thereupon: The committer of the slaughter, blood or invasion, in maner foresaid, or being art, pairt, red or counsell thereof; gif it be the defender, he schall be condemned at the instance of the persewer, gif he be on life; or in case of his decease, the nearest of his kinne, quha is flaine, without any probation of the libel, except summar cognition to be tane of the slaughter, blood shed or invasion, before the Justice, or any uther judge competent thereto: And gif the persewer slayis, woundis or invadis the defender, as said is, or be art, pairt, red or counsell thereof, cognition being tane, in case the defender be on live, or in case of his decease, the nearest of kinne, schall have absolvitour fra the persewer's libell: And gif the slayer, shedder of blood, or invader, as said is, hes landes or liferentes, and beis denounced rebell, and put to the horne, for none-finding of soverty, or none-compearance, to underly the law for the said slaughter, blood-shed, or invasion; in that case, the slayer, shedder of blood, or invader, incontinent after the denunciation, schall tane the benefite of his liferent, of quhatsumeyer his landes, offices or commodities, as in the saids actes and statutes thereupon, at mair length is contened; quhilk last act was also temporall, to indure for the space of seven zeires: And now it being knawen to his Hienesse, and the said Estaites, how necessar the famine is, to be always observed and kepted in continual observance, as ane universal law in all time cumming, for repressing of the saids invasions; therefore his Hienesse, with advise of the estaites, and haill body of this present Parliament, ratifies, apprievis, and affirmis baith the saids first and second actes, with the haill poyntes, articles, and conditiones contened thereintill, and ordainis the same to stand as ane perpetual law in all time cumming.

Acts of Parliament, v. I. p. 703.

1673. January 31.

SLEICH against SWINTON.

JOHN SLEICH having pursued William Swinton before the bailies of Haddington, for payment of 100 merks, due by bond; the cause is advocated to the Lords. The defender *alleged* absolvitor, because the pursuer invaded and wounded him, to the effusion of his blood, whereby he is freed of the pursuit by the 219th act, Parl. 14th, K. Ja. VI.—It was *answered*, 1^{mo}, That that act of Parliament required the invasion to be cognosced by the criminal judge. 2^{do}, It was found by the bailies, That the defender had wounded the pursuer, for which he was fined in a blood-wite. 3^{tio}, The defender cannot allege that he was wounded to the effusion of his blood; and any other stroke is no crime, nor falls within the act of Parliament.

No 1.

It was found, that invasion by any stroke, though without blood, came within the act 1594, cap. 219; and that the act extended to all judicatories where processess are intended. The act is meant to affect the

No 1.
first aggressor;
and the pe-
nalty still
holds, altho'
the party
assaulted de-
fend himself.

THE LORDS found, That invasion by any stroke, though without blood, fell within the act of Parliament; and that it was to be understood of the first aggressor; and that the other party being invaded, although he did defend himself, and in his defence wounded and blooded the other, yet that did not take off the first invasion, and therefore ordained witnesses to be examined *hinc inde*, to know who was the first invader; and found the defence competent without a cognition of the crime before any other judge.

Fol. Dic. v. 1. p. 93. Stair, v. 2. p. 163.

* * * The same case is reported by Gosford:

In a pursuit at Bailie Sleich's instance, before the bailies of Haddington, against Swinton, for payment of a sum of money, which thereafter was advocated of consent; wherein the pursuer *insisting*; it was *alleged* for the defender absolvitor, because, by an act of Parliament 1555, which is ratified by 14th Parliament of K. Ja. VI. in the case of invasion by any of the parties in process, cognition should be first taken criminally before the Justice: *2do*, The foresaid act of Parliament relates only to processes depending before the Session, and not before inferior judges: *3tio*, Albeit the pursuer did strike, yet he was first invaded; and so falls not within the act of Parliament, having done it for his own defence.—THE LORDS did find that they themselves might take trial of the injury *ad civilem effectum*, that the parties who does the wrong should *cadere causa*; which did not prejudice a criminal pursuit for the breach of the peace; and did likewise find, that the act of Parliament did extend to all Judicatories where processes are intended: And whereas it was alleged, that each party did strike the other, the LORDS did find that the first aggressor was only liable to the pain contained in the act of Parliament; and for trial thereof, ordained both parties to lead witnesses.

Gosford, MS. p. 306.

No 2.

A party who
had only
thrust his op-
ponent on the
breast, in con-
sequence of
a quarrel dis-
tinct from the
law-suit,
found to fall
under the pe-
nalty in the
act of Par-
liament.

1679. February 13. CRUIKSHANK against GORDON.

GEORGE CRUIKSHANK having charged Gordon of Seaton to grant to him a charter of the lands of Longcraig, conform to his obligation in his disposition; he suspended on this reason, that he had fulfilled the obligation by a charter given by him, and accepted by the charger.—The charger *answered*, *imo*, That the foresaid charter was disconform to the disposition, both in the tenor and *reddendo*. *2do*, The suspender, during the dependence of this process, had invaded the charger, and thereby had lost all his defences or reasons of suspension, by the act of Parliament anent parties invading one another during the dependence of process between them; and for instructing thereof, produced a decret of the Privy Council, bearing, that the suspender had invaded the charger, for which he was fined; which invasion was posterior to this charge.—It was *answered*, That the act of Parliament takes place only where the invasion is upon account