

of the process. *2do*, That the invasion must be by beating, wounding, or other like invasion, amounting to a crime cognosceable by an inquest; but here the case of the decret of Council was a sudden outfall upon injurious words, wherein the suspender was only found to have thrust the charger on the breast; whereas the charger did pursue him with a durk; and being fined as being the aggressor in such a case, it could not amount to a crime; and so is expiated by a suitable punishment inflicted by the Council.

THE LORDS found the invasion relevant to exclude the suspender's reasons of suspension, and approved of by the Council; and that there was no necessity to prove, that the invasion was upon account of the process; but that the statute was made to secure parties in law-suits against invasion, by beating, &c. which did comprehend thrusting, without respect to what followed from the person invaded, upon occasion of the invasion, and at the time when he was invaded.

*Fol. Dic. v. 1. p. 93. Stair, v. 2. p. 693.*

1684. *January 20.* MAXWELL of Wethergate *against* STUART of Chambelly.

MAXWELL of Wethergate having charged Stuart of Chambelly for payment of a sum of money, conform to his bond: And Chambelly having suspended, upon several reasons of compensation, ~~whereof some were found relevant and proven~~; but before discussing of the other reasons, and before extracting of the decret, Chambelly having strucken over the head, with a reed, Maxwell of Nethergate, Maxwell gave in a bill to the Lords, craving, That Chambelly, upon the act of Parliament, might lose the plea; and that the letters might be found orderly proceeded, and the hail reasons of compensation repelled: Witnesses being adduced, and the fact proven, it was *alleged* for Chambelly, That none of the reasons formerly discuss, found relevant and proven, could be repelled; but only such reasons as were pendent, and not discuss at the time of the fact. And, *2dly*, Even as to these reasons, they could only be repelled *hoc loco*, to be received by way of compensation; but he could not be precluded by way of action to pursue for them.—THE LORDS found, that he ought to lose the hail plea, the same not having come to a period by sentence; and refused to reserve action for these grounds of compensation against Nethergate.

*Fol. Dic. v. 1. p. 94. Pres. Falconer, No 45. p. 24.*

1687. *January.* DR STRACHAN *against* TOLQUHOUN.

FOUND, that when one party invaded another during the dependence, decret is to be pronounced conform to the libel or summons, and not conform to the act of litiscontestation, if it be narrower than the libel.

*Fol. Dic. v. 1. p. 94. Harcarse, No 934. p. 262.*

No 2.

No 3.

In an action, where battery intervened, the Lords decreed the aggressor to lose the whole plea, though he had various interlocutors in his favour, as the whole cause had not been finally decided.

No 4.