

either party has had as to acts of jurisdiction against one another ; but it being suggested, that the custom would clear little, the Lords proceeded to determine the relevancy of the points debated, without putting them to farther delay and expense ; and, by several votes, found the Bishop's concession to the University could not derogate from the prior grants made in favours of the Town ; and found the same proved by the charter of confirmation produced by the College, which they cannot hinder the Town to found on as probative against them as users of it ; and also found, though the Act of Parliament 1621 be statutory in some parts, yet, *quoad* the Town of St Andrews' jurisdiction, it falls under the Act, *salvo jure* ; and that the words "*vobis et in vos*," signify only injuries done to members of the University, and not by them ; but were ready to liberate the College from paying custom to the Town for any of their goods, if the University had insisted on that part of their declarator.

Thereafter, on a petition, the University offering to prove deeds of possession, the Lords allowed a mutual probation, before answer, to either party, to prove what acts of jurisdiction either of them has been in use to exercise.

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1697. July 23. THOMAS MOFFAT and MARGARET MURRAY *against* ROBERT MILNE and ANDREW PATERSON.

ARNISTON reported Thomas Moffat and Margaret Murray, his mother, against Robert Milne, mason, and Andrew Paterson, wright in Edinburgh. Moffat being heritor of a shop and tenement at the head of the West-bow, near the Weigh-house, and Mr Milne having acquired in all the adjacent lands, thereon to erect a new square, he obtains a warrant from the Dean of Guild to value and appreciate Moffat's lands among the rest, and then throws them down, and erects his fabric. Moffat now pursues for repossession of his own houses ; and, in regard that is now imprestable, he pursues for the true value, refusing to stand to his sham valuation ; and craves *juramentum in litem* for his damages.

ANSWERED,—What they did was *auctore prætore* ; and, he being then minor, they had no other redress but to apply to the Dean of Guild. And, by the 5th Act 1663, magistrates of burghs are authorised to dispose of ruinous houses ; and, by the Acts of the Town-council of Edinburgh, and the Act of the Privy Council following thereon, ratified in Parliament, the form of building in stone is prescribed ; and the lesser part must yield to the major, which is declared to be, not by the number of the heritors, but by the quantity of the rent ; else one perversicacious landlord might stop a whole design ; and, in the building both of the Tron-church and the Parliament-house, heritors were compelled to sell their interests ; and was so found in the late case between Mr William Dundas, advocate, and Thomas Wylie's children.

REPLIED,—The pursuer was not in the case of the Act of Parliament 1663 ; for that only took place where houses were ruinous for some time, whereas thir were actually inhabited ; neither was the method prescribed by that Act followed. And, for the proclamation in 1674, that obliged only the heritors subscribing, whereof he nor his authors were none ; and, under the pretence of decoration of the burgh, and of public good and utility, property must not be in-

vaded; nor can the Dean of Guild or private persons, on such pretexts, throw down houses without the heritors' consent.

The Lords inclined to think what the defenders had done was unwarrantable; but, in regard it was no other ways now reparable, save by satisfying the pursuer, they ordained some of their number to adjust the price, and see the heritor satisfied for his interest to the full; but refused to allow him his *juramentum in litem* thereupon.

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1697. June 24. WILLIAM DUFF *against* The EARL of SEAFORTH.

WILLIAM Duff in Inverness, pursuing the Earl of Seaforth, on the passive titles, for payment of a debt due to him by his father; and, referring the same to his oath, one of the articles whereon he was craved to be interrogated was, whether he had not intromitted with and used his father's Parliament-robcs. This the Earl reclaimed against, as neither pertinent nor relevant to infer vitious intromission, seeing that was only in consequence of his assuming the title and dignity of Earl, which was never found to infer a passive title. Yet the Lords thought his using his father's Parliament-robcs, was all one as if he had intromitted with his hangings, his horses, arms, or any other moveable furniture, which has been sustained to infer a passive title, where they were of any value, and such a considerable heirship as might import a behaviour. Yet see Dury, 6th November 1622, *Laird of Dundass against Hamilton*.

The Lords ordained the Earl to depone anent the interrogatory, and reserved the consideration what it should import till the advising of his oath; for it was urged such robcs may be pointed as well as any other moveables; and so, being *in commercio*, why should not the apparent heir's meddling therewith infer a *gestio pro hærede*. See January 15, 1630, *Cleghorn against Fairley*.

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1697. July 1. ALEXANDER and JOHN CUTHBERTS *against* CHARLES ROSS.

I REPORTED Alexander and John Cuthberts against Mr Charles Ross, writer in Edinburgh, who had been agent in managing their law affairs for many years, and had their papers in his hands; and they craving the same to be delivered up, he contended for a *jus retentionis et hypothecæ* in the writs, till he were reimbursed not only of the expenses he had given out, but likewise of a yearly pension of £4 sterling *per annum*, settled upon him.

ANSWERED,—They acknowledged his right of retention *quoad* his account of debursements, and which they were willing to pay, though extravagant; but he could not extend that privilege to his bond of pension, which was now nine or ten years owing, and amounted to no less than £40 sterling; seeing the practice of that hypothec was only introduced by consuetude, and depended merely on this reason,—that they had no other way of proving their