of Parliament, 1581, for punishing transgressors anent cruives and yairs, and killing of salmon and red fish in the rivers of Dee and Don, having pursued, by Thomas Farquharson, their procurator-fiscal, some transgressors, and fined them; they suspend on double poinding, that they live within the Duke of Gordon's regality, and so all the fines belong to him; and that the 111th Act founded on is but a temporary law, and a commission directed to these magistrates then in office, &c.; as appears by this,—that George Earl of Caithness and Alexander Earl of Sutherland are therein named, who were not immortal, and so was only a power during their life.

ANSWERED,—The Duke's regality is but late; and as that Act derogated from regalities then in being, *multo magis* it must be preferred to regalities erected since; and the Act is perpetual, for it allows them to hold courts yearly; which cannot be understood only of them in office at the time, but also of their successors.

REPLIED,—Thir fines, by the Act, belonging to the King, he, by erecting the Duke's regality, might give them to the Duke. And this is the same case with the competition between the *Laird of Grant* and *Dunbar of Westfield, sheriff of Murray*, about the casualties, mentioned *25th November* 1699, which was remitted by the Lords to the Parliament. And certainly he, as lord of regality, would have sole right to all the single escheats falling within his bounds; and why not to thir fines? seeing, if they be the King's, and at his disposal, they are conveyed by granting the right of regality.

The Lords found the Act not expired, but a perpetual law; and preferred the Magistrates to the fines in question, but prejudice to what the Duke shall impose in his own courts for such transgressions.

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1701. *July 25.* HENDERSON *against* MUIRISON.

WHITEHILL reported Henderson against Muirison, merchant in Aberdeen. The case was a bill of exchange accepted, but protested for not-payment; whereupon the creditor in the bill recurs against the drawer; who ALLEGED, no action could be sustained against him, because the protesting for not paying was not *debito tempore* intimated to him, whereby he might have had recourse against the drawer, but that he had kept it up a year; and, if this were allowed, then why not two or three years? And that both Marius and Scarlet, who write on bills of exchange, are positive that protests for not-payment ought to be advised within two or three posts thereafter, that the drawer may take such measures as may be necessary for his relief, otherwise he may be exposed to great inconveniences.

ANSWERED,—The certioration holds only in foreign bills of exchange; whereas this is an inland bill, where parties may know one another's condition without advertisement; and that our law prescribed no definite time for inland commerce.

To which opinion the Lords inclined: But, in regard it was alleged the debtor was broken before the term of payment of the bill and the protest, therefore they ordained that matter of fact to be tried; for, if that was true, there

was no necessity of advertising the drawer, who could not have then reached his effects. There would also arise some difficulty in the way of certioration: For if they dwell not in one place, where it may be done by way of instrument before a notary and witnesses, how shall it be proven that you sent him a letter, and that he accordingly received, unless you acquiesce in taking his oath thereupon, if he got any letter of advice giving him that account?

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1701. *July* 30. STUART of GRANDTULLY *against* The CREDITORS of SIR ARCHIBALD COCKBURN of LANGTON.

STUART of Grandtully gives in a petition, representing that where there was a process of sale of Sir Archibald Cockburn of Langton's lands, pursued by George Lockhart of Carnwath, and, by some agreement betwixt them, he was taken off; yet the process could not fall, seeing he had contributed to the carrying it on, and paid a proportion of the expenses; therefore craved the said process might not be given up, but he allowed to carry it on for his own and the behoof of the other creditors.

The Lords discharged the clerks to give up the said process to any party till they might consider the petitioner's interest therein. *Vide January* 1702, *Nasmith.*

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1701. *November* 13. GEORGE GORDON *against* The EARL of ABOYNE.

MR George Gordon against the Earl of Aboyne, his brother.—The deceased Earl of Aboyne granted a bond of provision to the said Mr George for 10,000 merks. He pursuing the present Earl on the passive titles for payment, a defence was proponed, that the bygone annualrents were all consumed in his aliment and education, and likewise offered to prove part of the principal sum paid, *scripto vel juramento;* which the Lords sustained in July last, but modified 1000 merks to be paid *medio tempore* by the Earl to his brother, for his subsistence; which was accordingly done. The Earl having neglected to make his election of his manner of probation, Mr George circumduces the term against him, and extracts the decreet; against which the Earl reclaims by a bill, representing, 1*mo*, That the decreet was wrong put in the minute-book, Mr Charles Gordon for Mr George, contrary to the Act of regulation 1672, and the Act of Sederunt 10th December 1687. 2*do*, It was null *pluris petitione*, being extracted for the whole 10,000 merks, when there was 1000 merks of it paid this last vacance.

ANSWERED to the *first*,—That the error was inconsiderable, seeing *constet de persona*, and the Earl had no process with any called Mr Charles, and so was sufficiently certiorated; and that the Acts of Parliament and Sederunt require only the special designations of the defender's name, and speak nothing of the