

solved to apply to the Parliament for reviewing and reconsidering the Council's sentence as iniquitous. And finding, that, by the 2d Act of Parliament 1695, citations, during the recess and intervals of Parliament, are to be issued out by warrant from the Lords of Session, he had prepared a bill to be given in to the Lords, for ordering a reduction to be raised, under their signet, of the Council's sentence, for citing the Duke of Queensberry, &c. to appear before the Parliament when it shall meet; but when his lawyers came to consider the clause, they thought it imported a previous cognition and trial before the summons could be granted, by which the Lords were summarily to hear and cognosce if there was ground for issuing out the summons demanded. And in regard the session was now rising, and there was no time for taking such a previous cognition, therefore the giving in of the bill was forborne.

We have several instances *supra*, in the cases of *Mr George Campbell*, *Mr William Gordon of Balcomy*, and others, where warrants were granted by the Lords to cite creditors, in order to giving protections in Parliament; but as to reductions of the Privy Council's decreets, there have been none as yet applied for. Sentences of the Session are tabled in Parliament by protestations for remedy of law; but neither these appeals nor reductions do stop execution; they are only devolutive, and not suspensive.

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1704. June 6. JAMES HENDERSON *against* JOHN BELCHES of TOFTS and the MAGISTRATES of EDINBURGH.

JAMES Henderson, one of the macers before the criminal court, against Mr John Belches of Tofts, advocate, and the Magistrates of Edinburgh, complaining, That when he had incarcerated the said Mr John within the tolbooth of Edinburgh, upon a solemn decret *in foro* for 3800 merks, contained in his father's bond, the said Mr John had applied to the magistrates for modifying to him an aliment, conform to the 32d Act of Parliament 1696, seeing he was ready to depone he was not able to maintain himself, unless he were at liberty to go about his employment; and James Henderson having ANSWERED, That he could have no aliment modified to him, because he offered to prove he had good and sufficient funds and effects whereupon he might subsist; and the design of the Act 1696 was only in favour of poor prisoners having nothing, and who were like to starve and become a burden to the burghs where they were imprisonet, which was not Toft's case; and in the mean time he offered him three shillings *per diem* for the bygones, and in time coming:

REPLIED,---His sufficiency to aliment himself could not abide terms of probation, but behoved to be instantly verified, either by his oath or otherwise. And this was not the formal way of tabling the cause before the Lords, by a summary complaint on a bill, but the regular way was by advocacy, if iniquity was committed: which could not be pretended; for the bailies had most justly ordained him to consign a disposition of his whole estate, personal and real, and to give his oath thereon; and which he had so done: and, being *juratum*, there can be no more inquiry; and they also modified twelve shillings Scots *per diem* till his liberation.

Henderson **OBJECTED**,—That the Bailies had refused to examine on thir interrogatories, If he had not clandestinely conveyed his estate to his lady and children, and other creditors he had compounded with, in defraud of him? and they had unjustly restricted the warrandice of his disposition only to facts and deeds since the decret, in prejudice of an inhibition he had served on the dependence.

The Lords were sensible the magistrates had generally abused the power given them by that Act, in exorbitant modifications of aliment, and liberating debtors if the same were not paid, and that it deserved to be rectified; but found this complaint came not regularly in, and therefore refused to interpose; but left the Magistrates to proceed as they would be answerable: and if James Henderson found himself lesed by their interlocutors, he had his remedy, by offering an advocacy from them.

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1704. *June 13.* JOHN MITCHELSON *against* GEORGE JOLLY.

JOHN Mitchelson, keeper of the register of hornings and inhibitions, gives in a complaint, bearing, That one George Jolly had yesterday come to his office, and craved a sight of their minute-book, which is patent to all the lieges, and had vitiated, scored, and cancelled an inhibition served in April last against his brother; and that he had detained the person to present him to the Lords; who calling for him, and examining him, he confessed he did it, but said it was through ignorance, because they were going to pay the debt of the inhibition, and so might lawfully score it.

The Lords thought the integrity of the records was of great concern to the people's security, and therefore, on his subscribed confession, fined him in 300 merks, and sent him to prison till he paid it, and aye and while the Lords relieved him; and, by the late Act of Parliament 1701, expressed the cause of his imprisonment in the warrant for his commitment: though his simplicity and ignorance pleaded a mitigation; he supposing that, on his design of payment, he might as lawfully score it as they do protestations at the minute-book of the Session, on production of the suspensions. And, for making up the minute-book, the Lords ordained it to be marked on the margin of the place scored, that it was done by mistake of one George Jolly, who had access to the book, and thought he might lawfully do it; and ordained it to be recorded in the end of the book, with his sentence, that all might see such practices would not go unpunished; and for example and terror to others, the advocates and whole lieges attending were called in to the hearing the sentence pronounced against him: And farther declared, the said minute should be as probative and authentic as if it had never been scored.

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1704. *June 17.* WILLIAM MACCULLOCH *against* MACGUFFOCK of Rusco.

By contract of marriage betwixt Mr William Macculloch, advocate, and Elizabeth Macguffock, daughter to Rusco, there was 9000 merks tailyed and provided in this manner:—To the said Mr William, and Elizabeth Macguffock his