

day of compearance not being therein prefixed. Again, the intimation by a notary was insufficient; that being only a private deed, without any authority. And Sir Alexander's private knowledge cannot be considered as equivalent to a citation. *Vide June 26, 1711.* *Page 532.*

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1711. *July 21.* The MAGISTRATES of EDINBURGH, *against* THOMAS MACKIE, Priest.

THOMAS MACKIE being charged upon a decret, obtained against him as a priest, upon the Act 3. Sess. 8. and 9. Par. K. W. and her Majesty's proclamation 2d September, 1709; before the Magistrates of Edinburgh, as Justices of Peace within the liberties and privileges thereof; at the instance of Mr. Samuel Gray, their procurator-fiscal, to remove himself furth of Scotland within a certain short space; with certification, that he should incur the pain of death, in case of returning: he offered a bill of suspension upon these grounds: 1, The said Act 3. empowers only the Lords of Privy Council or Justiciary to banish popish priests convicted; and therefore now, when the Privy Council is taken away, the Lords of Justiciary are the only proper Judges to send priests into banishment. So that the sentence against Mr. Mackie is *a non suo judice*. For her Majesty's proclamation, 2d September, 1709, requiring Justices of Peace to put the laws in execution against papists, gives no new jurisdiction, but only continues what the law had formerly given them within their respective districts. 2. The decret is intrinsically null for want of probation, in so far as the constables were admitted as witnesses, who were the accusers, and to be gainers in the event; 500 merks being appointed by Act of Parliament as a reward to the discoverer of any popish priest, jesuit, or trafficking papist. Women were also admitted to bear witness. 3. The trial proceeded without an inquest; which ought not to have been done in the case of a crime inferring so severe a punishment.

ANSWERED for the chargers.—Whatever might be said of laws referring the cognition of matters to the Privy Council with discretionary powers; yet, in present case, where law hath determined the nature, proof, and punishment of a crime, and hath left only the execution to the Privy Council; the suppression of that Court cannot be reckoned an abrogation of the other heads of the act 1700; but the execution thereof becomes the province of every Judge and Magistrate within his particular jurisdiction. For it is upon the account of executing the laws, that they are invested with powers and jurisdiction: which execution is universal, except in so far as it is restrained by the special privilege or competency of any other jurisdiction; and when that is suppressed, the ordinary jurisdiction, as freed of that restriction, takes effect universally for executing the laws. Nor is it any absurdity that the Magistrates of Edinburgh, who have but a territorial and circumscribed jurisdiction, should banish out of Scotland: because,

that is the sentence of the law, which their jurisdiction gives them only authority to pronounce; and her Majesty, in whom the Privy Council powers are vested eminently, did, by her proclamation, call and authorize the ordinary Judges to put the laws in execution, which is their duty. 2. A reward of the law is no bribery, or exception against a witness. Besides, the prosecution was not at the instance of the constables, but of the procurator-fiscal. And the constables had no pretence to a reward in this case. These were not the discoverers, but went, in obedience to the magistrates' order, and seized Mackie. Again, women are habile witnesses in occult crimes, as this is. And he refused to purge himself by taking the *formula* against popery. 3. No law requires trial by an inquest before the Justices of Peace in Scotland. And the Privy Council (when in being,) did proceed in the trial of the same crime without any inquest.

The Lords refused to pass the bill of suspension.

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1711. *July 26.* MR. ALEXANDER PATERSON and others *against* the TOWN OF EDINBURGH and their assignees to the two pennies on the pint.

An Act of Parliament, June 13, 1693, gave to the town of Edinburgh, an imposition of two pennies Scots, over and above the King's excise, upon the pint of all ale and beer to be brewed, in-brought, or vended within the city, and privileges thereof (except what is sold within the palace of Holyroodhouse, and the castle of Edinburgh,) for fifteen years; and further, during the sovereign's pleasure, not exceeding thirty years; for paying the town's debt; commencing from the first of July thereafter; to be paid, uplifted, and gathered weekly, monthly, quarterly, or otherwise, as the magistrates and town-council shall prescribe and order; who are empowered to farm, and set in tack, the said imposition by way of public roup to the best advantage, at the sight of the Lords of Privy Council or their nominees. In case of misapplication of this fund by the magistrates, they, as well as the receivers of the misapplied imposition, shall be liable to refund the same with interest, to the creditors of the town, at the instance of them, or any burghess of the burgh. Two of the Lords of Session, to be named by the sovereign from time to time, with the eldest commissioners to the Parliament of the shires of Mid and East Lothian, are to inspect the town's book of accounts; and in case of misapplication or malversation, to control, and make the misappliers or malversers, liable in manner aforesaid. The debts of the city remained a very great burden, although her Majesty had been pleased to continue the grant, and there were but thirteen years thereof to run: for four of which years, Mr. William Johnston and his partners had a tack of the said imposition. In order to sink these debts, the town-council, by their act, transferred their right of the said imposition to the said Mr. William Johnston and his partners, for thirteen years, including the four years of their current tack, from the first of July, 1700, for payment of L.547 Scots, with annual-rent from Lammas thereafter.