

and also the decret and precept of poinding were sustained, albeit they were done in the Yule vacance; for the precept was dated 26th December, and the same bore the decret to be dated 24th December; in respect inferior judges used to sit frequently, and minister justice in these times; and it were hard to infringe and annul all their proceedings done in these times; and this was considered, that it tended to purge a spuilzie, which is odious.

No 8.

Act. *Johnston.*Alt. *Craig.*Clerk, *Scot.**Fol. Dic. v. 1. p. 202. Durie, p. 784.*

1730. *July.* BLAIR *against* INCORPORATION of MARY'S CHAPEL.

No 9.

IN a competition of creditors, an objection was laid against a decree of furthcoming, that it was pronounced by the Magistrates of Edinburgh against inhabitants of the Canongate, over whom they had no jurisdiction. — THE LORDS were of opinion, That the Bailies of Edinburgh had no jurisdiction over the inhabitants of the Canongate; yet they sustained the decret upon use and wont, the Bailies having been in the constant custom of exercising such a jurisdiction; but they concerted an act of sederunt, discharging such jurisdiction in time coming. See APPENDIX.

Fol. Dic. v. 1. p. 202.

1736. *February 17.* JOHN LEGGAT *against* ANN and RACHEL DENOONS.

No 10.

IN the question betwixt these parties, the LORDS found a decret of furthcoming, obtained before the Bailies of Edinburgh, sitting in Edinburgh, against one of the inhabitants of the Canongate, not subject to their jurisdiction, null; and repelled the *answer*, That, by constant and immemorial usage, the inhabitants of the Canongate were convened before the Bailies of Edinburgh.

Fol. Dic. v. 1. p. 202. C. Home, No 15. p. 36.

* * Lord Kames reports the same case :

A DECREET recovered before the Magistrates of Edinburgh against an inhabitant of the Canongate, held as confest upon a citation *pro confesso*, was, after his decease, found intrinsically null, the defender not having been subject to the jurisdiction; and one cannot be considered as contumacious in not answering to a citation before an incompetent judge; *extra territorium jus dicenti impune non paretur*; and the LORDS did not regard the *communis error*, and constant consuetude of the Magistrates of Edinburgh, exercising a jurisdiction over the inhabitants of the Canongate, which might be sufficient to support di-