

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-

No 10. ligious upon a debt habilely constituted, which is favourable, but can never be sufficient to found a debt, where there is no other document save the decret itself.

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

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S E C T. III.

Legal Diligence Executed at a Wrong Place.—Head Court Held at a Wrong Place.

1610. February 14. CAIRNCROSS against HAMILTON.

No 11.

LANARK is the head burgh of the sheriffdom of Lanark, where denunciations are lawful against all persons dwelling within the shire; because, albeit there be two wards, yet there is no distinct jurisdiction, judge, nor clerk; but ane denunciation of ane man of the nether ward at Ruglen, will not be found null by way of exception, in respect of the custom to denounce oft times thereat.

*Fol. Dic. v. 1. p. 202. Haddington, MS. v. 2. No 1801.*

1622. December 7. INNES of Cotts against GRANT.

No 12.

A vassal of a regality was unlawed for his not compearance at his superior's head court, tho' holden at another place than was contained in his infertment, because of 30 years custom to keep the courts at that place.

ALEXANDER INNES of Cotts, Bailie of the regality of Spynie, charged one Grant of Elchness for three unlaws, for his not compearance at the head court of the regality, according to his infertment, every one of the three extending to L. 50. Grant suspended, That by his infertment he was bound to compear at the head courts, to be holden at the place of Spynie, and so could not be unlawed for not compearance at head courts kept in the regality of Elgin. It was answered, That the head courts of the regality had been kept at Elgin, and acknowledged as the ordinary place these 30 years bygone by the whole vassals, and by this suspender. The matter was contentiously disputed by the LORDS, in respect of the tenor of the infertment designing the place; nevertheless, in respect of the change of the estate of benefices, by erections and otherways, and that benefices are so dismembered by erections, that the courts cannot be kept at the places appointed by the old infertments, and that Elgin was more commodious to the vassals, and acknowledged by them these 30 years, and particularly by this suspender; the LORDS found the letters orderly proceeded, but modified every unlaw to L. 10.

*Fol. Dic. v. 1. p. 203. Haddington, MS. v. 2. No 2689.*