

Sheriff-depute, or that this warrant is recalled by this Court; and ordain the same to be recorded in the books of sederunt, and dispense with the reading hereof in the minute-book.

No 154.

Acts of Sederunt, p. 387.

1746. July 1.

JEAN DENHAM and WILLIAM WALLACE her Husband for his Interest, Supplicants.

JEAN DENHAM wife to William Wallace writer in Edinburgh, had formerly been married to Gilbert Stewart of Ballouchtoll, by her contract of marriage with whom she was entitled to a liferent out of certain tenements in Edinburgh, and wanting to be infeft therein, she, with concurrence of her present husband, presented a bill in Febrary 1746 to three Ordinaries on the Bills, as the Court of Session was not then sitting, craving, that in default of a Magistracy of Edinburgh, occasioned by there having been no election at Michaelmas last, the city being then in the power of the rebels, the Lords would authorise some person to receive the resignation, and grant infeftment thereupon, in terms of the procuratory contained in her contract of marriage, and grant warrant to the city-clerks to expedite and record the infeftment, as the law directed.

No 155.
A Bailie in that part was appointed to receive a resignation, and grant infeftment within burgh, there being a vacancy of Magistrates.

This bill was not proceeded on till the Session, when it was reported; and a difficulty occurred, how far it was in the power of the Court to supply the defect; for though in other cases, where an office of the law had been vacant, the Lords had supplied it, as naming a Sheriff, yet here the defect was somewhat more; and it was prayed they would create a superior, that he might give infeftment.

Pleaded for the petitioners, That by the spirit of the law, wherever any person was entitled to an infeftment, there was a method for his obtaining it, notwithstanding the superior's refusal, or any defect in his right; he might be charged with horning, or if he was not infeft, the vassal might apply to the next superior.

As this petitioner wanted nothing but a solemnity to complete her right, it would be very hard if it were not in the power of the Supreme Court of the nation to give her remedy.

The Lords had been in use to name Sheriffs, when they were wanted for infeftments; and the present case did not differ from that, for Magistrates of towns were no more than Commissioners for resignations, as in the hands of the King, who was the immediate superior of burgage holdings, as appeared by the stile of resignations, which run in these terms, 'I, by these presents, make, constitute, and appoint ——— my lawful and undoubted procurator for me, and in my name lawfully to resign. &c. as I, by these presents, resign, surrender, and *simpliciter* upgive and overgive all and hail, &c. in the hands of

No 155. ' the Provost or any other of the Bailies of ——— for the time, as in the hands
' of our Lord the King, immediate lawful superior thereof.'

THE LORDS nominated and appointed Gavin Hamilton, late one of the Bailies of Edinburgh, for receiving the resignation.

Reporter, *Dun.*

Fol. Dic. v. 3. p. 348. D. Falconer, v. 1. No 124. p. 151.

1746. July 3. CITY-CLERKS of EDINBURGH, Petitioners.

No 156.

The Court appointed Bailies in that part for granting infestments within the city of Edinburgh.

ON a petition of the Town-Clerks of Edinburgh, and certain heritors of burgage tenements therein, the LORDS granted warrant and commission to Gavin Hamilton, Robert Bailly, John Yates, and James Mansfield, merchants, and Bailies of Edinburgh for the year preceding Michaelmas last, or to any of them, and in case of their absence or refusal, to Thomas Allan, David Inglis, and Robert Forrester, merchants, and Bailies of the said burgh for the preceding year, or any of them, with power to them to receive resignations, and to give sasines of and upon all tenements holding burgage within the said burgh, *more burgi*, ay and until Magistrates should in course of law be regularly established therein; one of the common Clerks of the said burgh being always notary or clerk thereto, and that the infestments to be expedite thereon be registered in his protocol in terms of law.

Clerk, *Forbes.*

Fol. Dic. v. 3. p. 348. D. Falconer, v. 1. No 127. p. 154.

No 157.

The Court appointed Bailies in that part to receive applications from indigent prisoners for debt in the tolbooth of Edinburgh.

1746. July 18.

BRAIDWOOD, Petitioner.

UPON a petition presented by James Braidwood candlemaker in Edinburgh, shewing that he was incarcerated for debt in the tolbooth there, and that he was willing to dispoise to his creditors his whole effects, on doing whereof he was by law entitled to be alimanted or discharged; but there being at present no Magistrates of the city of Edinburgh to whom he might make application for that purpose, therefore praying the Lords to take his case into consideration, and to grant him such relief as the Magistrates of burghs were bound to do.

THE LORDS appointed the four late Bailies, to be Bailies in that part for proceeding on this petition, and for receiving applications of this nature from indigent prisoners for debt, and proceeding thereon.

Fol. Dic. v. 3. p. 348. D. Falconer, No 134. p. 166.