

1569. December 15. EARL of MORTON *against* LORD FLEMING.

No 56.

GIF the King directis his privat writingis subscrivit with his hand, in favouris of ony persoun, to the Lordis of Counsall, commanding and charging thame to desist and ceis fra all farder proceeding in ony action or cause dependand befoir thame, the Lordis, notwithstanding the samin, may pröcede in the cause, and do justice thairintill, as thay will answer to God and the King; because the administratjoun of justice sould not be stoppit be the Kingis privie writingis; and all his writingis ar understuid to be privie that are under his Grace's hand-writ allanerlie.

*Balfour, (JURISDICTION.) No 5. p. 267.*

1580. March. ——— *against* LORD ROSS.

No 57.

THE Lord Ross was bound, and acted, in the books of Secret Council, not to molest or trouble, otherways than by law, certain persons indwellers in the town of R., and that under the pain of 3000 merks. He being pursued before the Lords of Council and Session for the contravention of the said act, it was *alleged*, That the Lords could not decern upon the contravention unto the time the said Lords and others, his marrows, were first criminally convicted, by reason the contravention was qualified *criminaliter*, by taking men forth of their houses under silence of night, and for striking and wounding of them; and if the matter, being criminal in itself, were committed to probation by witnesses, the inconvenience would follow, that two or three witnesses would prove the thing that would take away men's lives, or at the least be a great motive to the inquest in the criminal judgment. To all this was *answered*, That the practice of Scotland was in such sort, that, into such kind of actions as were, of their own nature, both criminal and civil, the parties might pursue both criminally and civilly, and the one prejudged not the other, as into the action of breaking of law-borrows, and the action of falset, according to the common law, *C. Quando civilis actio prejudicet*. THE LORDS pronounced by interlocutor, that they were judges competent to cognosce in the cause of contravention, notwithstanding that there was no criminal convict before past in the said cause.

The Lords were found to be judges competent in a contravention of law-borrows, although the deeds were criminally qualified, and altho' there was no previous criminal process.

*Fol. Dic. v. 1. p. 495. Colvil, MS. p. 294.*

1609. November 28. MR JOHN RUSSELL Supplicant.

MR JOHN RUSSELL, procurator for Bessie Turnbull, and William Turnbull her father, in the action for annulling the pretended marriage betwixt the said Bessie and Robert Napier, depending before the Commissaries of Edinburgh,

No 58.  
The Lords *causa cognita* reponed a procurator

No 58.  
before an inferior court;  
who had been  
suspended by  
the judge.

and in the process of adherence pursued by the said Robert against the said Bessie, gave in his eiked answers, in the said cause of adherence, in write, declared that the Commissaries should not be patrons of such a pernicious and shameful cause; and contended in these terms. 'And albeit ye know the said marriage to be altogether null and unlawful, yet ye will proceed against all law and justice;' wherewith the Commissaries finding themselves greatly injured, they ordained Mr John to pay L. 12 of amand, and suspended him from procuring before them for a year; whereupon Mr John gave in his complaint to the Lords; and the Commissaries warned to answer to the complaint compearing, the matter was at length disputed upon these two heads; first, anent the power of the Commissaries in general, whether they might suspend or deprive an advocate admitted by the Lords; and next, if this fact of Mr John Russell merited suspension; wherein it was resolved, that the ordinary advocates admitted by the Lords, at their compearance in inferior courts, might so misbehave themselves, as the said inferior judges might justly and lawfully suspend and deprive them from any farther procuring in their courts; and as to Mr John Russell's particular offence, the LORDS found it rash and indiscreet, and the Commissaries punishment very rigorous; and, therefore, calling in the said parties, and the hail advocates who assisted Mr John Russell, as in a common cause concerning all their liberties, the Lords admonished the advocates to be modest, and not to give occasion, by their contempt to judges, to unlaw, suspend, or deprive them; declaring also, that if any wrong were unjustly offered to modest advocates, the Lords would censure and repair it. And as for Mr John Russell, the LORDS ordained him to be more reverent to the Commissaries in time coming, and to delete the words which they found contumelious in his defences; and ordained them to restore him to his liberty of procuration; and thereafter gave him up his supplication, because they would not have any record of that variance to remain.

*Fol. Dic. v. 1. p. 495. Haddington, MS. No 1659.*

No 59.

1610. July 14. WEDDERBURN against NISBET.

A MAN being retoured to his predecessor in ward-lands, and his retour quarrelled by reduction, in respect of his minority and less age, qualified by many circumstances in the summons, the defender, in fortification of his retour, offering to prove his perfect age the time of his service, will be preferred. An error of an inquest *in civilibus*, since the erection of the College of Justice has been tried before the Lords, and proved by witnesses, and not referred to a great inquest.—A man's eldest son compearing in judgment in his father's cause, and proponing allegiances, will be reputed his procurator, albeit he produce no mandate.

*Fol. Dic. v. 1. p. 495. Haddington, MS. No 1963.*