

1684. *February 12.* BOYD of PINKILL *against* CATHCART of CARLETON.

BOYD of Pinkill having given in a complaint against Cathcart of Carleton, as having committed a riot in pointing his goods, after a bill of suspension was presented, and ordained to be discussed:—ANSWERED,—He was ordained to produce the bill, and yet kepted it up; and therefore the Lord Ordinary, before whom it was heard, ordained the execution to go on.

REPLIED,—That there should have either been a decret or protestation, and so should have been put up in the minute book, to have given him fair warning and advertisement, before he could have proceeded.

The Lords, on Redford's report, found in such a case there was no formed process, and so needed not go to the minute-book: and thus found the execution legal and warrantable.

*Vol. I. Page 269.*

1684. *February 14.* DAVID PEACOCK and ALEXANDER GORDON *against* The TOWN of EDINBURGH.

THE action pursued by David Peacock in Vidavia, and Alexander Gordon, bailie in Aberdeen, his assignee, against the Town of Edinburgh, being called *in præsentia*; ALLEGED,—This debt had all the qualifications requisite to a public debt, and so was discharged by the 26th Act Parl. 1681; for it was contracted in 1640, when General Ruthven kepted out the Castle against the covenanting Lords, for the King, and had a general warrant in the Acts 33 and 34 Parl. 1640, anent the Committees of Estates borrowing money for carrying on that cause; and that the Act of the Town Council of Edinburgh, which is the warrant of this bond, mentions that it was to help to levy 500 men. ANSWERED,—The Act of the Town Council, being the debtor's own deed, cannot annul his bond; and the very Act bears, that they got an assignation upon the contribution of the tenth penny and the excise, for their relief.

REPLIED,—The bond relates to the Act, and without an Act would be null; and so is just alike as if the Act had been engrossed in the body of the bond; and the registers of a Town unvitiated are probative both *pro* and *con*; and that assignation for relief was never effectual, the contribution being but a voluntary thing; and the Estates giving that assignation is a sufficient argument that they acknowledged this for a public debt, and so the Estates undertook it *animo se obligandi*; and the definition of an obligation agrees here, that it is *vinculum juris quo necessitate astringimur*, &c.

The Lords declined to decide this; and named some of their number to endeavour to settle the parties; and accordingly the Good Town got down 4000 merks of the whole claim, and gave security for 6000 merks; and the decret went forth in these terms, for their warrant.

*Vol. I. Page 270.*