

The Lords, without deciding this nice point, and finding the mother had not yet given up inventory, but only taken out a decret-dative with a license, allowed the confirmation to be carried on in the minor children's name.

*Vol. I. Page 789.*

1697. *July 28.* ROSS of TILLISNAUGHT *against* GEORGE INNES.

Ross of Tillisnaught gives in a complaint, bearing, That, in an improbation pursued by the Duke of Gordon against him, and sundry other vassals, there was a certification granted; but he, on a bill, got the same stopped, and made a production of his charter and seasine; after which, it lying over, and he coming to call for the process, finds that one George Innes, a servant in the clerk's chamber, has given up the papers to the Duke's agents: whereby his property is like to be evicted from him, without the Lords interpose their authority to redress the same :---

The Lords immediately gave order to one of their macers to bring the said George Innes before them, lest, on the noise, he should make his escape; and, being come, they examined him; and finding sufficient matter of suspicion, that, for money, he had given up some of the papers, (though he denied he ever saw the charter and seasine,) they committed him to close prison till the matter were fully examined.

*Vol. I. Page 790.*

1697. *July 29.* LINDSAY, Bailie of the Regality at Glasgow, *against* PATON, FERGUSON, and Sundry other Maltmen living there and in the Gorbells.

LINDSAY, bailie of the regality at Glasgow, having convened Paton, Ferguson, and sundry other maltmen living there and in the Gorbells, for contravening the 37th Act, 1696, anent selling malt by the measure, and having fined them for every particular act in £10 Scots, *toties quoties*,---they gave in a bill of suspension, on this reason, That he had taken a decret against each of them for £3000, which was more than any of them was worth; and the most he could go was only £10 for each conviction. He opposed the Act of Parliament, which bore £10 *toties quoties*, which could be applied to nothing else but for every breach and contravention; else, after a year's transgression, they would cheerfully pay one £10 for all, and so elude the act.

The Lords considered this was a penal law, and not to be extended; and that magistrates and judges ought not to ensnare the people by letting their processes lie over, (which were to invite them, as connived at, to break the law,) and then take a decret for all, to their utter ruin and undoing. And, the Act being new, they resolved to hear them, in their own presence, How far the judge, by his own negligence or wilful forbearing, ought to lucrate these fines; and what the words "*toties quoties*," in such a case, shall import; especially seeing the act is not *in viridi observantia*, nor has yet taken effect in many places of the kingdom.

*Vol. I. Page 790.*