

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