

other deed of the party; and the reconciliation may only be thought to take away of future grudge and quarrel, and not of the preceding action, and civil pecuniary pain.—To this was *duplied*, That their reconciliation was an express remitting and forgiving of the deed of contravention, which being remitted, the pain cannot be craved by the party; neither could the King have any action, when the interest of his informer was decided, because of our practise the party informer *ante litem contestatam est dominus litis*. Notwithstanding of which exception and duply the LORDS found, That not only the King, but likewise his informer had good action. A case in some respects conform to this was decided before, betwixt the Laird of Craigiehall and Kinninmound.

Fol. Dic. v. 1. p. 534. Haddington, MS. No 1289.

No 13.

1607. February 27.

M'KIE against M'KIE.

IN an action pursued by M'Kie against M'Kie for the contravention of an act of the burrow court of Wigton, wherein the said M'Kie obliged himself and his cautioner, that the other should be harmless, &c. under the pain of L. 500, because, after the said act, he had drawn a sword, and pursued and invaded the other M'Kie; it was *excepted*, That this fact could infer no contravention nor penalty, because it was *modo conatus sine damno aut effectu*.—It was *answered*, That the invasion was relevant without any farther qualification. In respect of the which summons and reply, the LORDS repelled the exception. The Advocate compeared thereafter, and according to his desire was admitted for his Highness, and *alleged*, That the half of the penalty could not appertain to the Provost and Bailies of Wigton, but to the King; because that all acts of caution found for keeping the King's peace, under pecuniary pains, in cases of contravention, make the half of the pain to fall to the King's Majesty, unless the act bear the express contrary, which is not in this case.—It was *answered*, That albeit the King had right to the half of the penalties resulting from the contravention of lawburrows, found in the register of Session or Privy Council, yet penalties of troubleance within burgh pertain to the Magistrates of the same. Notwithstanding whereof the LORDS found, That the King's Majesty and his Treasurer had right to half of the penalties foresaid.

Fol. Dic. v. 1. p. 534. Haddington, MS. No 1338.

No 14.
Drawing a sword to invade a man, though no harm followed, was found sufficient to infer contravention.

1609. December 2.

KILSPINDIE against LEARMONTH.

THE Laird of Kilspindie being charged to find lawburrows to Patrick Learmonth in Aberlady, under the pain of 5000 merks, for eschewing the danger of horning, found caution; and being thereafter pursued for contravention, the

No 15.
A person was charged for an exorbitant penalty