

and none at all, when the Articles were not to sit, during the recess. It was answered, That the Act of Parliament, in the statutory part, gives this allowance, from the first day to the last day of Parliament, without any condition of being absent or present, which the Parliament can only quarrel; and there are no sederunts marked of Parliament, nor any thing in the Act relating thereto. The Lords found the reasons relevant thus, *viz.* That the days should be abated which the Commissioners were not in Edinburgh, or suburbs thereof, and so were not attending the Parliament; and for such recesses of Parliament that were of that endurance that the commissioners of Parliament could conveniently go home, do business, and return, according to the several distances of their dwelling, in which recesses the Articles were not to sit; but that they were to attend, if the Articles sat, to look to the interest of their shires, albeit they were not upon the Articles; and allowed no days to the commissioners for their coming to, or going from the Parliament, in respect of their near distance.

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1674. *June 23.* SIR JOHN SCHAW *against* The FEUARS of PASLEY.

SIR John Schaw having charged certain feuars in Pasley, for their proportion of his charges, as commissioner to the Parliament, upon the Act of Parliament 1661, "Declaring all the vassals of the king and prince, whether the temporality or spirituality, to be liable to the charges of commissioners to Parliament;" which the feuars suspend, on this reason,—That the foresaid Act is derogated by a posterior Act, restoring the bishops to be the third estate; so that they represent the whole ecclesiastical estate: The Lords found, That the bishops did only represent their own vassals; and that the suspenders, being only vassals of the abbacy of Pasley, not belonging to any bishoprick, were liable for their proportion.

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1674. *July 16.* The TOWN of INVERNESS *against* FORBES.

IN the declarator at the instance of the feuars holding of the Town of Inverness, against the Town, decided the 14th day of July instant, it was particularly alleged against Cullodin, That he could not be declared free of the private stents of the Town, because the Town had obtained decret against him, discerning him, "In all time coming, to be liable to the Town's stents, for their particular use, and that upon his own consent;" for the decret bears, "that he was judicially present, and consented;" so that, being both a decret of consent, and *in foro contradictorio* upon a full debate, it was sufficient against him. It was answered, That the said decret was a decret of suspension of a stent then imposed, extending to 35 merks; and, by the decret, it appears that Cullodin consented only to the payment of the 35 merks; which in the dispute bears expressly, "Providing it were no preparative in time coming;" and bears, "That the Lords, of consent, found the letters orderly proceeded for 35 merks;"

and also the Lords declare, That Cullodin and the other feuars shall be liable for all necessary stents of the Town in time coming, being laid on in the method that they prescribed; and doth not repeat the consent as to that declaratory article; which, being *ultra petita*, and extrinsic to the process, cannot be instructed by the decret itself, unless it were warranted by Cullodin's subscription; as was found in the case of the Laird of Buchanan against Lieutenant-colonel Osburn: for there was nothing in the process in time coming, but a charge for a particular stent; and there is a protestation, in the end of the decret, against stents for the expenses of the Town's process, which shows the consent was not, as the decret bears, "for all necessary private stents:" And, as to the decret, in so far as it is a decret *in foro*, it was very just that the Town, being in long possession of imposing private stents upon the feuars, should continue in that possession, until, *in judicio petitorio*, the feuars should liberate themselves by reduction or declarator, as now they have done: And there is nothing more ordinary than to repel, in a suspension, a reason founded upon the point of right, and even to find the letters orderly proceeded, for by-gones, and in all time coming, *in possessorio*; which doth not clash with the contrary decret by reduction or declarator *in petitorio*: as if any party being stopped in their possession of a high-way, should pursue the stopper, if the use of that highway for many years were proven, the Lords would decern the defender to desist from troubling the pursuer in that way in all time coming; and yet the defender might, in a declaratory action, instructing that there were neither constitution nor prescription of that way, be liberated from that servitude. And though, in the debate of this decret of suspension, the Town mention their possession, and Cullodin his infetment, *pro omni alio onere*, yet the Lords' interlocutor doth not express whether they proceed in the point of right or possession; and therefore the sentence must be understood *secundum naturam negotii*, not to be as to the point of right, there being then no declarator depending; but, as to the point of possession, that the Town might continue their possession of stenting, till the point of right were declared. It was replied, That the decret was opposed, bearing to be of consent, which needed not to be repeated to every article; and that the protestation did confirm the consent, as to any other stents but those for expenses of process; and, however, it being a decret *in foro*, decerning for all private stents in time coming, acquiesced in by the space of ten years, it could not be quarrelled of injustice, but behoved to stand as a perpetual rule. The Lords, having considered the whole decret, found, That the consent was not adhibited to the whole articles in the sentence; and therefore did not sustain it as a decret of consent, to exclude this declarator; and found, that, albeit it was *in foro*, being only in a suspension, it did not exclude the suspender's declarator of liberation.

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1674. July 29.

JOHN MITCHEL *against* TULLOS.

ROBERT Schaw, having apprised the lands of Lethingie from his brother Michael Schaw, dispones the same, for security of 5000 merks, to his sister Jean Schaw, Tullos her husband, and their heirs. Thereafter, John Mitchel, stabler,