

1678. *January 18.* CORNELIUS NEILSON *against* The CLERK of His Brewery.

No 2.
Found that a
baron-bailie
has not the
power of sum-
mary incarce-
ration.

CORNELIUS NEILSON having incarcerated the Clerk of his brewery by a warrant from the Bailies of Leith, he gave in a bill of suspension, with a charge 'to set at liberty,' upon this reason, That he was unwarrantably incarcerated by the Bailie of Leith, who is but a baron bailie, not having the privilege of summary incarceration, which is only competent to Royal Burghs within their burgh, but not to the Bailies of their barony, which are not burghage. It was *answered*, That the Supplicant being a servant, liable for the count of a brewery and debtor for a great sum, and having no visible estate, but refusing compt, and being *in meditatione fugæ*, he ought to be detained in prison till he find caution, at least *judicio sisti*.

THE LORDS found, That the incarceration by the Baron bailie was unwarrantable; but the LORDS ordained the Supplicant to be continued in prison by their authority upon the foresaid reasons, till he found caution to be present at the diets of process or else to pay the debt; and ordained the account pursued for to be advocated before themselves from the Bailie of Leith.

Fol. Dic. v. 1. p. 571. Stair, v. 2. p. 596.

1680. *November 11.*

JAMES CORNWALL of Bonhard *against* ANDREW GRIERSON-BONHARD.

No 3.

By a bill craves a warrant to stop his own salt which the said Andrew was transporting beyond seas, &c. THE LORDS found it not in their power to grant such summary execution against one who was not a bankrupt, unless he would prove he were such as in Mason's case, No 1. p. 8547; but referred him to the Admiral who would summarily arrest the ship.

Fol. Dic. v. 1. p. 571. Fountainball, MS.

1700. *January 3.* WATSON of Dunikier *against* The EARL of LITHGOW.

No 4.
A *meditatione fugæ* warrant granted against a witness, and a protection granted to him against his creditors.

WATSON of Dunikier pursuing the Earl of Lithgow, for payment of a debt of L. 10,000 Scots contained in his predecessor's bond; the defence was, payment by Carnock, the principal debtor; and being retired by him, was found amongst his papers, and given back to the creditor's heir for a little money; and William Paton of Panholes, writer, being one of the parties concerned in this mystery, and cited by a first diligence not yet expired, a summary warrant was craved to apprehend him, because he was not only dealt with to abscond, but to retire out of the kingdom; and so their mean of probation might be eternally lost; and if the bill were given out to see and answer, that intimation