

get the stipend for such years as they served through connivance, aye till they were removed by a sentence.

The Lords likewise repelled this defence in respect of the answer aforesaid.

*Vol. II. Page 27.*

1698. *December 21.* The TOWN of ABERDEEN *against* The ABERDEEN BREWERS.

The Town of Aberdeen having obtained an Act of Parliament in their favours, imposing two pennies on the pint of all ale brewed and vended within their bounds; and the Brewers being convened and decerned thereon, they raised suspension and reduction on thir reasons, *1mo.* That sundry of the burghesses entered their protestations against the procuring any such oppressive Act; and their Commissioner to the Parliament ought not to have acted contrary to the known inclinations of the Town, his constituents. *2do.* The Magistrates, in respect of the scarcity, discharged brewing, and took the bear, which was to have been malted, and grinded it into meal; by which, having taken away the mean of our livelihood, our brewing, you are liable to refund our damage, and we must have retention of the Excise.

ANSWERED to the *first*,—Whatever was the manner of procuring the Act, the same cannot be disclaimed now, having all the formality of such Acts. And for the *second*, Necessity has no law: it was better to convert the bear into meal, than many poor Christians to starve; and they can crave no abatement, because their brewing is less than formerly, for then they pay less excise conform to their brewing; and if they had damage, it is not liquidated, and so cannot meet this charge.

The Lords repelled the reasons; but reserved their action for damages, as accords.

*Vol. II. Page 27.*

1698. *December 29.* GEORGE DENISTON *against* THOMAS SMITH, Merchant.

THERE were mutual complaints betwixt George Deniston, writer, and Thomas Smith, merchant, wherein George complained, that the other had beat him publicly at the Cross of Edinburgh, for no other cause but that he agented a process for a poor woman against him.

Smith ALLEGED, *1mo.* This scuffle is pretended to have been done three years ago, and so is prescribed *dissimulatione*, when *tales injuriæ statim ad animum non revocantur*. *2do.* It is already judged by the bailies; and he was fined in £50.

ANSWERED,---Our law knew no such prescriptions of riots as three years if not pursued within that time. To the *second*,—The magistrates interposing by their procurator-fiscal was only collusive; and, *esto* this satisfied the *vindicta publica*, yet there being nothing decerned for his vindication and reparation, it neither absorbed nor cutted off his process *ad vindictam privatam*; likeas, by the 38th Act Parliament 1661, anent Justices of the Peace, it is declared, if the