

(meaning her husband) deponed; whereupon she lifted up her hand, and, in passion, beat his hand off her shoulder. This he *alleged* was an invasion and battery, for which, by the act of Parliament, she ought to lose the depending plea.—THE LORDS having examined the witnesses, and advised the depositions, found, he having given the provocation, this was not such an invasion as was meant by the act of Parliament, and therefore affoizied her from this incident process; and, because of some defamatory expressions in his information against his mother-in-law, they fined him in ten dollars, six to the party, and four to the poor.

Fol. Dic. v. 3. p. 69. Fountainball, v. 1. p. 738.

No 7.
Shoulder, who had *jeeringly* taken hold of her. She did not incur tinfel of her cause.

1699. June 6.

WILLIAMSON *against* GOVAN.

WILLIAMSON of Cardrona pursued John Govan, Provost of Peebles, for L. 48 Scots he had given him in of clipped money to pass; and, during the dependence; Cardrona, in company, on a quarrel betwixt him and Provost Govan, had thrown a lighted candle at him. The Provost complains, in terms of the 219th act 1594, that he may be affoizied; and the Lords allowing a probation, which came this day to be advised; it was *objected*, *1mo*, That the throwing of a lighted candle was not such an invasion as fell under the act of Parliament; which requires it should be such a deed as would be the foundation of a criminal pursuit, which this was not, but only a petty riot or scuffle. *2do*, It had no contingency with the depending process, but arose from another debate betwixt them about a feat in the church. *3tio*, The probation did not bear that he received the least hurt or prejudice thereby.—THE LORDS considered, if they once found such practices not to be included in the meaning of the act of Parliament, but only downright beating, wounding, or invading, then many insults of this kind might be encouraged, and they might throw stoups and other things at their antagonist; and it was easy to abstract from the depending plea, and forge another quarrel, if that were sufficient to elude the act: And they remembered that Pittarow's running with his drawn sword at Glenfarquhar was lately found an invasion in the terms of the law, though he was not touched, nor any prejudice followed, (*See* No 6. p. 1370.); and that the act was necessary to curb *præfervidum Scotorum ingenium*; and therefore they found this case, though but a slender attempt, fell within the meaning of the act of Parliament; and therefore affoizied the defender; and though penal statutes are strictly to be interpreted, yet this was thought no extension.

Fol. Dic. v. 1. p. 93. Fountainball, v. 2. p. 59.

No 8.
Throwing a lighted candle, which occasioned no hurt, found sufficient cause for incurring the penalty.