

the clerk being lately dead, and none put in his place, he only supplied that defect; the design of a clerk being only to see if the decreet be extracted conform to the minutes which he had attested; and he was not to take advantage of them, but was willing to repon them yet to their oaths, and to insist only against those that were most notoriously guilty.

The Lords thought this decreet had not so much as the visage and scelet of a decreet; and that it was given without Sir John Shaw's knowledge, he being then out of the country, and who would have no accession to what looked like oppression: Therefore they turned the decreet to a libel, and reponed such of the defenders as he now insisted against, not only to their oaths, but to all their other defences *in causa*. *Vol. II. Page 386.*

1707. July 25. PRINGLE *against* THOMAS REID.

A COMPLAINT being given in by Pringle againt Thomas Reid, sheriff-clerk of Haddington, That, after he had received payment of a house-maill, he had assigned it to one Mackaulay, and charged in his name, though he disowned it; and put Pringle to suspend on this reason, That he had paid it to Reid, the cedent, and produced his discharge:—This appearing by the papers in process, though he exculpated himself by sundry rigorous proceedings of Pringle's against him, and so *ars deluditur arte*; the Lords thought the fault greater in him, who was bred about the house. And some moving to deprive him of his office of sheriff-clerk, it was at last carried, That he should be fined in 200 merks, and go to prison till he paid it, and longer, during the Lords' pleasure, that it might terrify others from attempting such tricks again.

There was nothing modified to Pringle, because Reid had privately transacted with him, and taken off his interest; so what was done was for the vindication of public justice, or the *vindicta publica* only. *Vol. II. Page 387.*

1707. July 26. ROBERT PATERSON, Commissary of Aberdeen, *against* SIR SAMUEL FORBES of FOVERAN.

I REPORTED the complaint Mr Robert Paterson, commissary of Aberdeen, against Sir Samuel Forbes of Foveran; who having unfortunately broke his leg, and employed Andrew Skeen, chirurgeon in Aberdeen, to cure it; and he craving his wages and salary, and they not agreeing on the quota; Skeen pursues him, before the Commissary of Aberdeen, for payment, and obtains a decreet against him for 450 merks; which Foveran attempted twice to suspend, but the bills were refused; whereupon he was forced to make payment, and procured Skeen the chirurgeon's discharge.

Some of the reasons in the bill of suspension carried reflections against Commissary Paterson, viz. :—That Skeen, the pursuer, had capitulated with him as judge, to decern for an exorbitant sum, that he might get a part of it to himself: and that the Commissary said to Skeen, You may kill *impune*, by applying corrosive plasters to his leg; for we see physicians kill *cum privilegio*, and