

there can be nothing more rational than the method laid down by that noble statute of Parliament, Act 124th, 1429, assuring those countries and states that shall restore shipwrecked goods broken on their shores, they shall meet with the same justice and restitution if their ships break on our coasts. So, if the courts at Westminster shall sustain our decreets as final, we ought to do the like to theirs. But it is known they do not.

Some were for trying if this decreet against Sir John was final by the laws of England. And, *2do*. What authority the decreets of the session had in England and their judicatories.

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1711. *July 25.* MRS LYON *against* The COUNTESS of ABOYNE and LORD KINNAIRD.

Mrs Lyon got summary execution against Aboyne and Kinnaird, on the discussing of her appeal; but, there, the Peers had expressly taxed her expenses to £40 sterling; so there was nothing left to the Lords, but the application and executive part, by giving horning on fifteen days thereon.

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[See the Reports of the Case between these parties pointed out in the Index to the Decisions.]

1711. *July 27.* DAVID SOMERVELL *against* ROBERT SOMERVELL.

DAVID Somervell protested against an interlocutor, in favours of Robert Somervell, who had bought some houses at 2500 merks; and DAVID CONTENDED, That, after his disposition consigned was delivered, the price was still unpaid.

ROBERT ALLEGED,—That the disponent had possessed and uplifted the rents; which must compensate the price *pro tanto*. Which the Lords sustained.

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1711. *November 6.* THOMAS MACKIE *against* The TOWN of EDINBURGH.

THOMAS Mackie, a Popish priest, being apprehended, and their mass-vestments, altars, and crucifixes, being found in his house, the magistrates imprisoned him; and, on a probation, ordained him to remove out of Britain betwixt and a prefixed day; of which sentence he presented a bill of suspension, on thir reasons: *Imo*, That the town were not competent judges to such an extensive penalty; for they could only banish out of their own liberties and jurisdiction, and *extra territorium jus dicenti impune non paretur*. And by the Acts of Parliament against seminary priests, trafficking papists, and Jesuits, they are only accountable to the Privy Council and Criminal Lords of Justiciary; and not

obliged to answer to inferior courts. *2do*, He was not taken saying mass ; and the clothes and ornaments were not his, but belong to the Lady Seaforth ; neither can it be proven that he is a priest, but has lived these many years in Edinburgh, without giving offence to the government or any others. *3tio*, The libel against him was not proven ; for all the witnesses adduced were the constables, and a servant woman in the house where he was seized. Now the constables are inhabile ; for they have a premium and reward for their discovery ; and so are parties that can tine or win. And, as to the woman, she is most incompetent in a matter that dips so near to treason.

ANSWERED for the Town,—That they were sufficiently empowered to banish him out of Scotland, by the Queen's late proclamation against Papists, in August 1709 ; whereby she requires the Justices of Peace, and all her other Judges, to put the laws against Popish priests punctually to execution : and it is the interest of our religion how many judicatories be empowered to execute these laws ; especially seeing the Privy Council is now suppressed. *2do*, It is not pretended he was taken in the act of saying mass, for that is capital by our law ; but only that he is a seminary priest ; and which they need not refer to his oath, because, by dispensation, they have express allowance to swear, with this mental reservation, that they are not priests, meaning they are not priests of Baal or of Jupiter ; and this they call an innocent invention, for easing their oppressed consciences : but they use a short process, by offering him the test and formula against popery, ingrossed in the Act of Parliament 1701 ; and which he refusing to sign, it is *probatio probata* against him. As to the *third*, about the inhability of the witnesses,—if the constables were rejected, this crime could never be proven ; and they being public officers of justice, whatever share befall them, none can be fitter. And, as to the woman, in latent cases *et ubi est penuria testium*, they are every day received.

The Lords repelled the reasons of suspension in respect of the answers ; and ordained him to enact himself to remove, betwixt and a day, out of the kingdom ; and, in case of refusal, to be imprisoned till a ship was ready to transport him.

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1711. November 7. THOMAS SCOT against WILLIAM BAILIE.

THE Lord Polton, probationer, (in the room of Lord Anstruther, deceased,) reported Scot against Bailie. James Baillie of Glentirring being debtor to Scot of Gilesby in 100 merks, by bond, in April 1696 ; Thomas Scot, the creditor's son, having right thereto by assignation, pursues Mr William Baillie, advocate, as representing his brother on the passive titles, for payment.

ALLEGED,—The bond being usurious, he must be assoilyied from the debt ; in so far as it is dated the 23d of April 1696, and yet is made to bear annual-rent from the Martinmas 1695 preceding, which is five months and twelve days ; and does not bear the usual clause and declaration accustomed to be inserted in such cases, where money is borrowed betwixt terms, that the money was truly lent, given, and received at the preceding term, notwithstanding its date posterior thereto.

ANSWERED,—Landward writers know not all these subtleties ; but it is plain