

1741. *July 16.* SIR ROBERT GORDON *against* ———.

THE Lords, in this case, found,—That the bailie of a Baron Court might give a decret against a defender contumaciously absent,—fining him for a delinquency, and ordering him to prison till the fine was paid : and that, upon such a decret, he might lawfully grant a warrant to commit him.

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1741. *July 20.* ——— *against* MAGISTRATES OF STIRLING.

THE Lords found,—That minority was a legal incapacity, which hindered any man from being a councillor or magistrate in a burgh ; and that, if a minor was by mistake chosen a councillor or magistrate, he might be removed by the other councillors and magistrates, *ex officio*, without any application from a private party : Notwithstanding it was pled, that this was in fact a reduction of his election, which was only competent before a higher court, and that the council had no jurisdiction over its members in so far as to remove them from their office. This the Lords refused to sustain in a case where the incapacity was so clear ; but if it had been any statutory incapacity, or upon account of malversation in office, or for any other reason that was dubious, and might require a long discussion, in that case the Lords would have found otherwise.

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1741. *November 8.* ——— *against* M'LEOD OF GENZIES.

[Elch., Nos. 5 and 6, *Wadset.*]

THIS was the case of a wadset which contained an assignation to the reverser, proceeding upon a narrative of love and favour, of the hail kains, customs, duties, casualties, during the life of the reverser, he paying yearly four chalders to the wadsetter. It was contended, *1mo*, That this paction was usurious ; because, by the ordinary course of sale, that quantity of victual would yield more than the annualrent of the money for which the lands were wadset. This the Lords repelled ; because the value of the victual was very little above the annualrent of the money,—and the wadsetter was bound to pay the cess.

*2do*, It was contended that this wadset was improper : and therefore the wadsetter, if he entered to the possession, behoved to be accountable ; for there is here a back-tack which is the characteristic of an improper wadset, by which the creditor does not take the hazard of the fruits of the land for the interest of his money ; and in this case, though the back-tack was only for a time, yet that did not alter the nature of the wadset, which, being once improper, could not afterwards become proper.

To this it was answered,—*1mo*, That this was no back-tack, but only a concession upon the part of the wadsetter, which the reverser might make use of or