

as sought.—THE LORDS found this no nullity, unless he had been cited to give his oath of calumny ; but taking notice of the disconformity of the two extracts, contradicting one another, they ordained the solicitors to cause cite Graham, the clerk of Perth, to answer for that malverse in his office ; and if he cannot clear himself, then to be fined and censured by the Lords.

*Fol. Dic. v. 1. p. 326. Fountainball, v. 2. p. 525.*

No 12.

1743. *January 26.* THE BARBERS OF EDINBURGH *against* WILSON and BLAIR.

IN an action at the instance of the Barbers of Edinburgh against Wilson and Blair, barbers in Canongate, for shaving, &c. within the town of Edinburgh, though not freemen of the city, it was controverted, *1mo*, Whether action lay, seeing the defenders were not apprehended in the actual transgression ; and *argued*, that it did not, from the analogy of the 24th act, Parliament 1633, and act 5th, Parliament 2d, sess. 3d, Ch. II. which were acts made for securing burghs from unfree traders, and whereby the penalty of contravention is declared to be confiscation of goods ; but it is therein expressly enacted, that the Magistrates of burghs shall not, on the account foresaid, trouble or molest the lieges, unless the delinquents be apprehended in the actual and present transgression of the privileges of the burgh. And, *2do*, Whether the defenders, who were not resident in the town of Edinburgh, were amenable before the Dean of Guild of Edinburgh.

THE LORDS found, that the action lay, and that the analogy from the statute did not apply ; and that the defenders being cited within the town of Edinburgh, where the trespass was committed, were regularly cited.

Such is the criminal law in general, that where a delinquent is cited within the territory in which the delict is committed, he is amenable to the courts of that territory.

*Kilkerran, (DELINQUENCY.) No 8. p. 159.*

1745. *June 11.* REBECCA DODDS *against* WESTCOMB.

WILLIAM WESTCOMB, an Englishman, who had an office in the Exchequer in Scotland, and had for some years resided in Edinburgh, having given up his office and retired to England, a process of declarator of marriage and adherence was brought against him by Rebecca Dodds, before the Commissaries of Edinburgh, with a conclusion that, failing his adherence, he might be decerned in a certain sum in name of aliment ; wherein appearance having been made for him, with a declinator of the Commissaries' jurisdiction, as he was neither a native of the country, nor had either residence or effects in it, the Commissaries

No 13.

Inhabitants of Canongate were found amenable to the Courts of Edinburgh, when prosecuted for infringement of the privileges of the burgesses of Edinburgh.

No 14.

In a process of declarator of marriage, it was objected for the defender, that tho' he had an office in the Exchequer in Scotland at the time of the alleged marriage, yet,