

The Court seemed to agree, that whatever jurisdiction was by the act 1703 committed to the Judge Ordinary with respect either to fining, imprisonment, or transportation, that the conviction is limited to six months from the delinquency; 2dly, They seemed to think that by the act 1672 the inferior Judges might seize and confiscate. But the great difficulty was, Whether the Ordinary Judge could by the act 1672 fine and imprison? and if they could not, but only the Council, Whether that power was extended to them by the act 1703? and upon the whole superseded for three weeks, and recommended to search for the proclamations of Council before 1672 or 1703; and afterwards 28th July such an act in 1668 was produced. The Court seemed to agree that the punishment committed to the Council by the act 1672 was not transferred to the Judge Ordinary, but they found that by common law the Judge Ordinary could execute these laws.

This case marked 3d July. I have marked also what was done in Court, 28th July. 2dly, As the Court found that this act 1703 gave no new jurisdiction except as to the punishment by transportation of unlanded men, we found that none of the other penalties were limited to six months, and that it was no defence against these other penalties, and found it not proveable by oath of party. 5th June 1742 Altered, and found proveable by oath of party by the President's casting vote. *Pro* were Mihto, Drummore, Kilkerran, Balmerino, Monzie, *et ego*. *Con.* were Royston, Justice-Clerk, Haining, Strichen, Dun, Leven. Adhered as to the prescription. 24th July, Adhered, and refused a bill without answers.

No. 28. 1744, Feb. 11. COMMISSARY CLERKS *against* PRINGLE.

THE Lords after much disputing, found that the proof must be transmitted here without extracting.—N. B. There was no summons of reduction before the Commissaries.

No. 30. 1744, July 17. SHERIFFS-DEPUTE OF EDINBURGH, *Supplicants*.

ON the death of Earl of Lauderdale, Sheriff-principal, Mr Linn and Mr Sandiland, Deputies, petitioned the Court to authorize them to continue in their offices till the King name another, which we granted as we had done in the case of Renfrew on Earl of Eglinton's death, and I believe also in Caithness on Ulbster's death, and Earl of Breadalbane being abroad. *Vide* Fountainhall's Copy Acts of Sederunt, 16th February 1561.

No. 31. 1744, July 20. MESSENGERS OF EDINBURGH *against* DRUMMOND.

THE Lyon having given a commission as a messenger to Drummond, two messengers in Edinburgh presented a suspension, first, that there were already 24 messengers of the shire of Edinburgh, including the Lyon, Heralds, and Pursuivants, in terms of the act 46th Parl. 11, James II. 2dly, That Drummond is of bad character and guilty of bad practices. The Lyon objected to the jurisdiction; 2dly, That the Lyon, Heralds, &c. are no part of the 24, and besides them there are but 16; and 3dly, Disputed the facts mentioned in the second. We agreed that the bill was competent upon the first, but then the reason was not true. As to the rest we thought the first application should have been first to the Lord Lyon; and therefore refused the bill, but prejudice of applying to the Lyon and his Court.