

No. 32. 1744, July 25. ROBERTSON *against* SIR JAMES STIRLING, &c.

THE question now turned chiefly upon the competency of the Court to enquire by suspension, Whether the Commissioners were qualified in the terms of law? in which question I had great difficulty upon moving the bill, but was determined by an observation in the answers, that if one not having authority should keep a man in captivity without pretence of law or in execution of this act he is indeed guilty of a high crime, but the remedy lies not in this Court. But Drummore and Justice-Clerk brought over again the first question, Whether we can review the same? and Justice-Clerk seemed to think, that if their judgment was doubtful we could not review, but if they were apparently iniquitous, we might. Upon putting the question it carried by the President's casting vote that we could not review upon iniquity. The next question was, Whether we had jurisdiction to enquire if the Commissioners were qualified? and it carried seven besides the President to five that we had not; and therefore refused the petition and adhered. Kilkerran and Strichen did not vote in the first question, and Justice-Clerk, Drummore, &c. voted against it. But in the second, Justice-Clerk and Drummore voted for the interlocutor as a consequence of the first interlocutor, and yet Kilkerran and Strichen who would not vote in the first question, voted against the interlocutor in the second question, and Dun who voted for the first interlocutor voted against the second.

* * * The following case is here referred to :

On a petition of a messenger at Glasgow who had been adjudged as a soldier on the late act, complaining that he had presented a bill of suspension to Strichen, on this ground that he was in no sense within the description of the act, and that Strichen refused to write upon the bill; we remitted to Strichen to refuse the bill, 18th July 1744.

No. 33. 1745, Feb. 21, 24. EARL OF BREADALBANE'S PETITION.

THE Earl by petition represented that the patent of his honours of 16 (13) August 1681 though passed the Great Seal yet never was recorded in the records of Chancery, but a part of the record left blank where it should have been inserted, which he discovered on applying for an extract for which he had some use, and therefore praying for warrant and order to the Director to fill it up. Some of us doubted because that was the Chancellor's record, and by the same rule if charters of land under the Great Seal should not be found recorded the like application might be made; but a precedent being quoted from the appendix to Sir William Cockburn's answers to Sir Alexander Cockburn of Langton's petition concerning the Usher's office then depending before us, viz. a like application in this Court by Sir William Ballenden, as pro-nevoy and heir to Sir John Ballenden of Achinounshill to record a charter by Queen Mary in 1565 of the office of Keeper of the Exchequer-door, and which was granted 26th November 1635, and though directed to the Clerk Register, and mentioned only the registers in general, yet appears to have been filled up in the same way in the record of charters, lib. 32. No. 671, but I suppose only in the end of the book, for they do not appear. (I mean the charters) to