have been inserted in the order of their dates; therefore we ordered this charter with our deliverance on this petition to be inserted in that blank.

No. 34. 1746, July 1. JEAN DENHOLM, *Petitioner*.

THERE being a long vacancy in the magistracy of this burgh, Edinburgh, by the Rebels stopping the election at Michaelmas last, the question was, Whether we can appoint Magistrates of the town to receive resignations and grant infeftments, as we can Sheriffs? The difference is, that Sheriffs as to that point are purely ministerial to execute the precept of sasine granted by the King, whereas Bailies give the precept or charter as if they were superiors. But the President thought that this was no more than to appoint an officer that the course of the law be not interrupted, and it carried to appoint, only Tinwald and I did not vote; and accordingly they appointed Bailie Hamilton one of the last Bailies.

Upon a petition from the town clerks and others, with a long memorial, the Lords authorized the four Bailies of last year to receive resignations and grant infeftments of the burgage lands.

The Lords this day (18th July) nominate and appoint Bailie Gavin Hamilton, and two or three more, or any of them in that part, to receive applications from insolvent prisoners upon the act 1696, and to execute that act. This was on the petition of James Braidwood, and some weeks ago on the petition of one Beugo.

The Lords having the 1st, 2d, and 18th of this month appointed Bailies for giving insolvent debtors the benefit of the act 1696 in the town of Edinburgh during the vacancy of the magistracy,—the town clerks prayed us to appoint a Dean of Guild and Council, which we granted, but restricted their powers to stopping encroachments in building and preventing unfreemen's retailing.

No. 35. 1746, June 6, July 16. SCOTT *against* FULLERTON, &c.

THE Lords adhered unanimously to the Ordinary's interlocutor fixing the wideness of the hecks to three inches; 2dly, That the soles of the cruives must be in the bottom or channel of the river, but as to the height and breadth or thickness of the dike, as there was no line regulating them nor reason, if it was not to allow the salmon to leap them, so the practique in the river Don 1666 seemed founded on the tenor of the grant referring to former possession, and that in 1684 in this river seemed also to be on former possession, at least that in 1662 was so in express words, and did not limit the breadth but only height: Therefore the major part were for altering this interlocutor as to that point, and found no sufficient cause yet shown for limiting the defender as to the height or breadth of the dike, and continued the rest of the cause till Tuesday, and parties procurators to be then heard. We, June 11th, after hearing these two days, unanimously altered the Ordinary's interlocutor with respect to the side-dike, and found that there was no sufficient cause for removing it since the soles of the cruives are ordered to be lowered, and the Ordinary himself agreed. And lastly, We unanimously adhered to the Ordinary's interlocutor ordering the soles of the cruives to be lowered, and the wideness of the

hecks rectified under the penalty of L.50 sterling, but would not order the defender to continue them so under that or any other penalty, and far less would we annex any penalties as to the other regulations, viz. Saturday's slap, drawing up the hecks, and laying by the . Several of us *inter quos* Arniston and Tinwald doubted of our powers. The President was clear we had powers. Before the hearing, I was doubtful. But I remembered, as I thought, former precedents, besides three decreets before us in 1666, 1684, and 1702, where the Lords had enjoined things with penalties, and I remembered (and at last found it) an injunction by the Chancellor of England, 12th Geo. I. to a defender not to print a book without licence of the pursuer the proprietor under the penalty of L.1000 sterling, which was produced before me in the process Booksellers in London against Booksellers in Edinburgh. The President also instanced penalties on procurators to compear, &c. and Arniston admitted our power to order a thing to be done under a penalty; and therefore agreed to the interlocutor as to lowering the soles of cruives and as to the wideness of the heck, but would not agree to ascertain the penalty of future transgressions; and so it carried. Many of us thought the penalty by far too high as to the Saturday's slap, &c. and doubted if the defender could be made liable in a penalty for his servants, and were for other limitations, but putting the negative on penalties for future transgressions as to the soles of the cruives and wideness of hecks put an end to that dispute. 16th July, The Lords adhered as to bringing down the soles of the cruives and not removing the side, and refusing to regulate the height or breadth, but found that proper penalties ought to be annexed to future transgressions, and remitted to the Ordinary to regulate these.

*** The case Minister of Luss against Colquhoun, 9th July 1746, is here referred to.

COMPRODAN being convened before the Bailie of Luss for cutting wood on the Minister's glebe, went on to cut during the process, wherefore the Bailie decerned him in L.24 to the Minister, and fined him in L.40 to the Procurator-Fiscal, and ordained him to find caution not to molest the pursuer, or to cut any woods in the glebe in time coming under the penalty of L.100 Scots,—and Comprodan presented a bill of suspension,—and it is for the sake of the third point, the Bailie's power to set a penalty on future transgressions that I mark this case, that being so similar to the like question before us, the case of Scott of Brotherton, (*supra*) with respect to salmon cruives. The Lords were divided as to both last points, but the majority refused the bill of suspension.

No. 36. 1746, July 31. JAMES BRAIDWOOD, *Petitioner*.

See Note of No. 34.

No. 37. 1746, July 31. THOMAS OGILVIE *against* CAPTAIN HAMILTON.

A complaint being made of Captain Hamilton's unwarrantably forcing the possession of the petitioner's tenants cattle, furniture, &c. turning them out of possession of their farms, and setting their grass for rent, we ordered the complaint to be served, and Captain Hamilton to answer in five days after service. It was served personally the 25th in the forenoon, and no answers being put in, we found him guilty of a contempt, and granted warrant to commit him to custody until he find caution to the satisfaction of the Sheriff