

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.