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

of the county where he shall be seized, to put in answers against the first of November, and also to pay what damages shall be awarded. I proposed to make it only *judicio sisti et judicatum solvi.*

*** The case is again mentioned thus:

December 16, 1746.

THIS was a complaint against the Captain, for spuilzieing some household furniture, cows, &c. from his tenant David Ogilvie, on pretence of his being in the Rebellion, whereby he was in hazard of losing his rent, and for first eating the grass and after setting the parks of two other tenants who had no accession to the Rebellion, for which the Captain got L.16 sterling, and publishing a roup of the then growing crop,—which was presented to us the end of July last; and as the offence required a summary and extraordinary remedy, we ordered the Captain to put in answers against a limited day, and on his failure granted warrant to apprehend him till he should answer and find caution *judicatum solvi.* The warrant was not executed, and this Session he put in answers excusing his contumacy and justifying all he had done, and pleading the act of indemnity. The answers which were drawn by Mr Robert Craigie, late Lord Advocate, made some noise here and at London, where I am told they were reprinted, and greatly cried out against, which is indeed one principal reason for my keeping them. The importance of the question, *i. e.* what acts were justified by the indemnity made us appoint a hearing in presence, and upon the hearing we unanimously found that the facts complained of did not fall under the indemnity, and therefore allowed a proof. Only Leven differed, and mentioned a defence in fact that had not been mentioned in the pleading, that the Captain did not pocket any of the money but distributed it among the soldiers, which if it had been alleged from the Bar and offered to be proved I should have had more difficulty on the indemnity, but as this was the first day that I had been in the House after the loss of my dearest dear wife, who was the joy and comfort of my whole life, I was not able to speak further than to give my vote.—27th January, On a reclaiming bill we gave an act before answer to this indemnity.

No. 38. 1747, July 21. COMMISSARIES OF EDINBURGH *against* THE COMMISSARIES OF DUNKELD.

PREFER the Commissaries of Edinburgh, although we generally agreed except Tinwald, that these parishes are in the diocese of Dunkeld, and notwithstanding the 6th act 1609, *me inter alios renit.* December 15th Adhered. I was in the Outer-House.

No. 39. 1747, July 22. JOHN BLAIR *against* HUGH BLAIR of Borgue.

JOHN BLAIR sued before the Commissaries of Edinburgh a declarator of nullity of the marriage of Hugh Blair his brother on the ground of idiotry and incapacity to consent. The Commissaries, after examining him in their presence, gave an act for proving. The defender's friends presented a bill of advocation, 1st, that this reason of nullity was a novelty; 2dly, That they were no judges to try idiotry, which could only be done by an inquest. We pretty unanimously refussd the bill, *renit. multum* Tinwald.