

No. 21. I did not vote ; but on a reclaiming bill, that danger seemed not so much insisted on, as that it would be hurtful to the boys in the hospital, where the worship begins at that hour. However, 16th July, the Lords adhered.

---

1751. November 12.

STEWART, Surveyor-General, *against* LAMONT of that Ilk, &c.

No. 22.

LAMONT of that ilk, and some other gentlemen, by way of compromise for a transgression of some of their tenants, granted bond in 1743, that none of their tenants should for seven years be guilty of smuggling under the penalty of L.100 sterling every time, payable to Stewart the Surveyor-General, or the Collector of Customs for the time, to be proved by the delinquent's confession, or by witnesses on a summary complaint to the Sheriff of Argyle or otherwise, which was signed by seven heritors each for his own tenants. A suit being brought on this before the Sheriff, which was advocated to this Court, they found the bond illegal, and that it could not produce action. They thought that if it was a bond to the King, it ought to have been in the King's name, and then could only have been sued in Exchequer ; besides it was imposing penalties on the subject against law. But if it was considered only as a bond of a private person, a subject, under a condition, then he could not sue for the penalty further than he had interest in the performance of the condition, which was none at all.

---

1752. January 14. SCOTT HEPBURN of Kingston *against* M'LACHLAN.

No. 23.

THE Laird of M'Lachlan being sent with a party of rebels in October 1745 to levy the Cess in East Lothian, robbed Hepburn of Kingston of L.740 sterling in cash. Scott his nephew and heir, after Kingston's death, sued M'Lachlan's son and heir ; and on a proof brought, we found him liable, 22d January 1751, (as marked *voce* PERSONAL AND TRANSMISSIBLE.) But when Scott applied for a confirmation, he was opposed by his sister as nearest of kin, which obliged him to produce for his title in the process an assignation by Kingston, which happened to be of even date with the Pretender's bond, (mentioned *voce* PERSONAL AND TRANSMISSIBLE,) but which Kingston had not then probably either seen or heard of ; in which he requests the pursuer's father, for the pursuer's behoof, to call for and require payment of the money, which he describes thus, " L.740 agreed upon to be levied by Co-