

THE LORDS repelled the allegiance as not relevant, and found the disposition of the land with all right thereto, could not extend to the regality, except it had been expressed.

No 8.

Fol. Dic. v. 1. p. 492. Stair, v. 2. p. 172.

* * * The like was decided 20th February 1733, Hay of Strowie against Creditors of Simpson. See APPENDIX.

1734. December 7. EARL OF WIGTON *against* TOWN OF KIRKINTILLOCH.

No 9.

A BARON having granted a charter to his Burgh of Barony, with power to them to chuse their own Bailies, whom he appoints and declares to be his Baron-Bailies within the bounds of the Burgh; the LORDS found, that by this grant no more was intended than a subordinate jurisdiction, such as is competent to vassals, which the incorporation of the Burgh is; consistent always with the accumulative jurisdiction in the superior. See APPENDIX.

Fol. Dic. v. 1. p. 492.

S E C T. IV.

What cases must be tried by an Inquest.

1622. January 30. The STEWART of the MERSE *against* L. WESTNISBET.

IN an action of double poinding, pursued at the instance of one Johnston in the Merse, who for blood committed by him, was convicted by the Laird of Westnisbet, heritor, and vassal to the King, of the lands within the which the blood was drawn, and the fact committed, albeit he was no Baron; and also the said Johnston was convicted by the Earl of Hume's Bailie, as Stewart of the Merse, for the same blood. THE LORDS, in respect of the prevention of the King's vassal, preferred him in the right of the unlaw, to the Stewart, albeit the vassal's, viz. Westnisbet's decret was quarrelled by the party upon these nullities, viz. That the Laird of Westnisbet was no Baron, and so could not have right to blood-wits; *2do*, That it was given only upon probation of the committer's confession, testified by the clerk's assertion, whose affirmation could not make faith without the party's subscription, in a matter of an hundred pounds contained in that sentence, being for two blood-wits, or that he might

No 10.

The decree of an inferior judge for bloodwit was sustained on the party's confession, tho' without an inquest.

No 10. be bound by that assertion of that clerk, being a clerk of a base court, who had not the power of any common notary; and that any notary's assertion would not bind a party in such a sum; 3^{to}, That the pursuit being criminal, should have been determined by an assize, and could not have proceeded upon any other probation; 4^{to}, That thereby no satisfaction was appointed to the party hurt. All which reasons and allegiances the LORDS repelled, and sustained the decret given by the King's vassal; but they modified ilk one of the two unlaws to twenty-seven pounds.

Act. *Bglber.*

Alt. *Henderson.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 493. Durie, p. 12.

1634. February 13. TAIT against DARLING.

No 11.
Found in conformity with
the above.

ONE Darling being convened before the Bailie of the regality of Melrose, at the instance of John Tait and the Procurator Fiscal, for wounding of the said John Tait, to the effusion of his blood; and the fact of blood and blood-wyte being referred to the defender's oath, Andrew Darling being then present in court, and refusing to give his oath thereupon, decret was given against him, convicting him, and therefore unlawing him in a particular sum, for blood and blood-wyte; which decret being suspended on this reason, that the same is a null sentence, seeing that the party is not in law holden to swear upon a criminal fact, and the Judge ought not to put it to his oath, but only ought to have tried the same by an assize, and neither by oath, nor yet by witnesses; for witnesses might have been produced before the inquest to inform them, but the judge could not try it by witnesses; and the most that the judge could do in such a case, was to unlash for contumacy, and not for the fact;—THE LORDS sustained the decret, notwithstanding of this reason, and found, it might be tried by the party's oath, (or by witnesses, as some thought,) seeing the party was personally present; and for refusing to give his oath, they found the sentence well given; for he was not pursued for life or member, to incur any criminal censure therefor, but only for a pecunial unlash; which being to that end, might be tried by his oath; and in facts clandestinely done in the night, or where there are few or none to qualify the same, trial by the parties oath, with no reason ought to be refused, as is usually done before the Lords of Secret Council.

Act. *Trotter.*

Alt. ———.

Fol. Dic. v. 1. p. 493. Durie, p. 704.