

him to the place, and pay the bygone profits since the intimation of his gift. The defender alleged Absolvitor; because his gift from the king to the commissary expresses a power to nominate a procurator-fiscal; and, by the reservation in the Act restoring bishops, gifts granted by the king before are reserved. It was answered, That the fiscal having no gift to himself from the king immediately, the power in the commissary's gift was but *ex stylo*, and by inadvertence, and could not exclude the fiscal nominated by the bishop; especially seeing the fiscal is a check upon the commissary, and lifts the bishop's dues, and so cannot be constituted by the commissary himself. *2do*. That the Act bears an exception of the present, and of the fiscals that then were. The Lords found, That the fiscal nominated by the commissary by virtue of his gift, if he were authorised and admitted by the commissary, before the intimation of the bishop's nomination, that the same was sufficient.

*Vol. II, Page 55.*

---

1672. *February 2.*

BELL *against* FLEMING.

THIS cause being decided the 20th of January last, the Lords, upon a bill given in to them, whereby the defender offered to prove, that the holograph tickets were for a cause and of a date truly anterior to the arrestment, and that the citation against the common debtor was also before, and that the Dean-of-Guild Court was accustomed to decide such matters:—they found the same relevant to eleid the presumption of collusion, by the pointing made of the goods in the party's custody, in whose hands arrestment was laid on upon debts of their own, and diligence done thereon after the arrestment.

*Vol. II, Page 58.*

---

1672. *February 10.* The TOWN of BRICHEN *against* The TOWN of DUNDEE.

THE Magistrates of Brichen pursue the Magistrates of Dundee for payment of the debt of Lawrence Dundass, who, being incarcerated in the tolbooth of Dundee, was suffered to come out of the tolbooth. The Lords having, before answer, ordained witnesses to be examined *hinc inde*, anent the manner of the prisoner's outcoming, and the necessity thereof; the witnesses proved, that he came once out to the kirk to sermon, and several times to get his meat at the jailer's house, and sometimes to the fields, and upon the river by boat, the jailer or his man being still with him; and that he was still valetudinary and sick. There was also an instrument produced taken against him, when he was not [out] upon these occasions; but the prisoner did not escape at any time. Upon all which, the Lords found, That debt did not burden the Magistrates of Dundee; and assoilyed them.

*Vol. II, Page 68.*