

No 34. 1633. February 8. EARL OF HADDINGTON *against* HUSBANDMEN in Preston.

THE Earl of Haddington having charged certain husbandmen in Preston for lawburrows, each one of them for 400 merks, they suspended, that conform to the act of Parliament, they ought to find caution only for L. 40 each. The suspension lies over undiscussed, while the Earl obtains decret of contravention at the advising of the cause; and while the action was pursued, they protested, that the suspension should be discussed before sentence was pronounced. It was *alleged*, that after the deed of contravention, there could be no modification of pain craved. THE LORDS modified the pain conform to the act of Parliament, and conform thereto decerned the contravention.

*Auchinleck, MS. p. 33.*

No 35.

Found in conformity with Grant against Grant, No 31. p. 8036.

1633. February 9. LINDSAY *against* DENNISTON.

LINDSAY of Bomull pursues Denniston of Dalquharn upon contravention, for coming to the pursuer's land of Bomull, and entering in the house of one who was then actual tenant to the pursuer, dwelling upon the said lands of Bomull, and then taking out of the said tenant's house a cow, and breaking up of the tenant's chest, and taking out thereof, and away with him, three bolls oats, pertaining to the said tenant, which the pursuer libelled to be deeds of breach of lawburrows, seeing thereby the defender was bound, that the pursuer, his men, tenants, and servants, should be harmless at his hands, in their lands, bodies, goods, &c. THE LORDS found no process upon this contravention, upon this fact libelled, for taking away of the tenant's goods, albeit being within the house of the tenant, upon the pursuer's heritage, seeing the tenant was not pursuer, nor the action at his instance.

*Fol. Dic. v. I. p. 534. Durie, p. 670.*

No 36. 1634. February 1. THOMAS WRIGHT *against* ROBERT CLERK.

SOMETIMES the LORDS find the contravention proved, but to infer the half of the penalty for which caution is to be found, if the deed be not very violent and the party not maimed.

*Auchinleck, MS. p. 33.*