Ordinary upon the Bills) obtain Letters of Lawburrows under the Signet directed to Messengers at Arms commanding them to take his Oath, that he dreads Harm from the Person or Persons complained of, their Wives, Bairns, Tenants, Servants and Dependers, or others upon their Account or Procurement.

Letters of Lawburrows used formerly to be granted against Persons named and their Accomplices in generall, whereby it was left arbitrary to the Obtainer or Messenger to charge any they pleased: Which Practice proved very opprestive to the Liege, and therefore the granting such Letters against Accomplices in general was discharged Act 85. Par. 11. J. 6. The Oath given by the Party of Lawburrows ~~exacted~~ is wont to be conceived in these Terms that he dreads from the Party complained on bodily Harm: Because Lawburrows at the first Institution of it, reached only Security against bodily Harm. But now Lawburrows being ordained to secure Men in the Persons or goods of themselves their Wives Bairns Tenants or Servants; it should be sufficient for the Complainer to swear, that he dreads unlawful Harm in these. Especially considering, that it might be interpreted mean and dishonourable for one to make Faith, that he is afraid of bodily Harm from another, as if he durst not defend himself, Stair Lib. 4. Tit. 48. §. 1. The Letters of Lawburrows contain no express Warrant for taking an Oath from him at whose Instance they are to be executed, or tho the Messenger who executes them do not exact such an Oath as the Letters warrant them to take; yet such Omission doth not annull either the Letters or the Act of Caution: Tho' it would be a Ground of Suspension to the Party charged who suspending upon such a Head could not be obliged to find Caution till the Charger had given his Oath 7 December 1627 L. Clackmannan contra L. Fingask. M. Scottish. on Act 129. Par. 9. J. 5. And in extraordinary cases where the Complainer proves or gives Evidence of Violence already used or Threatnings to do Mischief, by Decreets of Contravention of former Lawburrows or Testimonials of creditable Persons, Letters of Lawburrows ought to be granted without any Oath from the Complainer upon the Judges Perusal of the Evidence and finding it sufficient which the Deliverance of the Bill of Lawburrows should bear. Stair ibid.

The Messenger having taken an Oath from the Raiser of Lawburrows that he dreads such Harm charges the Person of whom he dreads it to find Caution within Six Days if on the South Side of Tay, and 15 Days if on the North Side: That the Complainer, his Wife Bairns Tenants and Servants shall be harmless and shaithless in their Bodies, Lands, Tacks, Possessions, Goods or Gear, and no Ways troubled or molested therein by the Person complained upon or others of his causing, sending, hounding, resetting, Command, Assistance, or Ratihabition, whom he may stop or let, directly or indirectly, otherwise than by Order of Law and Justice Act 117. Par. 7. J. 6. Under the Pain of 2000 Pound for a Peer, 1000 Pound for a great Baron, 1000 Merks for a Freeholder (or a Burgess having Land holden Burgage) 500 Merks for a Feuar (or one holding Feu of a Burgh) 200 Merks for an unlanded Gentleman (or a Burgess with Land) and 100 Merks for a Yeoman Act 166. Par. 13. J. 6. Which Penalties are determined according to the Quality of the Person charged to find Caution, and not according to the Condition of him to whom the Caution is found

found. Mackenzie Observ. on Act 166. Par. 13. J. 6. Tho' the Latter's Quality was the Rule, Act 5. Par. 1. J. 3. Before the Pains of Lawburrows were raised Act 166. Par. 13. J. 6. and called in our present Stile, the Pains of the new Act of Parliament. These are the ordinary Penalties of Lawburrows when there is no other Proof of Danger, than the Oath of the Complainer. But in extraordinary Cases of Violence already used, or former contravention of Lawburrows by the Party complained of, the common Penalties are some Times heightened in Proportion to the Danger, and in other Cases abated or mitigated when the Parties are not able to pay Caution or to pay it pinch Stair Lib. 4. Tit. 48. §. 2. Mackenzie Observ. on Act 5. Par. 1. J. 3. There is no Law for obliging a Burgh to find Lawburrows for the Burgesses, the Law is unreasonable to exhibit the present them when transgressors of the peace Power. Hewards Answers to Direct Doubts Tit. Lawburrows for Burgs.

A Person charged with Lawburrows, or other suspected Charge, may make to be put out Act of Caution under the Hand of the Bailie Law in Stirling that he hath found Caution conform to the Charge. Which Caution is drawn back to the Time of the Charge about Caution is not found at some time after Hutchison Trail Tit. contraventions and Lawburrows. Lawburrows are ordinarily suspended when the Pains of the Charge are great and beyond those are of Law. Charges of Lawburrows are suspended either upon finding Caution or Evidence under the Penalties in the Charge with a Protestation in the mean time for a Vibration according to Law, in case of Breach of the Lawburrows: or they are suspended not in Evidence but simply upon their being of a Penalty beyond that in the Act of Parliament, or other Reasons without finding Caution to keep the Charger shaithless &c. Suspensions of Lawburrows are never discussed as other Suspensions, but by Way of Action upon a Summons of Contravention when the Lawburrows are broken. But if a Person charged with Lawburrows neither suspend nor find Surety, the Charger may proceed to Denunciation and Caption, and the Person charged will be liable to the Pains of Lawburrows if he wilfully do Harm to the Charger his Wife Bairns &c. Act 269. Par. 15. J. 6. which is not so to be understood, as if the Charge per se did without Denunciation make him liable: For the simple Charge is sufficient for that Effect 8 July 1620 Semple contra Cunninghame. Stair Lib. 1. Tit. 9. §. 30. Lib. 4. Tit. 48. §. 8. And the omitting to denounce was only a Favour done to the Party charged. The Reason why one charged with Lawburrows is liable as if he had found Caution tho' he has not done it, is because it were unjust that he should better his Condition by his Contempt, and Person charged with Lawburrows and his Cautioner are liable for a Breach or Contravention thereof to the Pains of Lawburrows in solidum. Act 269. Par. 15. J. 6. that is conjunctly and severally in solidum at the Option of the Charger, as in all other pecuniary Obligations. And the Surety hath no beneficium discussionis, which is competent in our Law only to Sureties ad factum praestandum.

Finding Surety that the Complainer, his Wife, Bairns, Tenants and Servants shall be harmless, is not so to be understood, as if every damage done to these did infer a Breach of Lawburrows, but only damnum, injuria datum, or animo inferendi; Damage done wittingly and wilfully. For J. A. Contravention is not in for-