

could not extend to the maintenance of August and September, which was assigned before for so onerous a cause.

No 3.

THE LORDS repelled the defence, in respect of the reply.

1665. *July 28.*—IN the cause of Adam Rae, mentioned yesterday, some of the Heritors alleged absolutor, because they were singular successors, and by the act of Parliament, for the old maintenance, singular successors were excepted.

THE LORDS repelled this allegiance, and found that exception only to be extended to the maintenance contained in that act.

*Stair, v. I. p. 303 & 304.*

1666. *June 28.* DUKE OF HAMILTON *against* The DUKE of BUCCLEUGH.

No 4.

THE Duke of Hamilton, as collector of taxation, having charged the Duke of Buccleugh for the taxation of the Lordship of Dalkeith; he suspended upon this reason, That the King possessed these lands himself the years of the taxation, and so cannot demand them from the suspender, who is a singular successor. The charger *answered*, That he had the taxation from the King for a cause onerous, viz. a debt.

THE LORDS found the reason of suspension relevant.

*Stair, v. I. p. 383.*

1666. *December 15.* LORD COLVIL *against* FEUARS of CULROSS.

No 5.

THE Lord Colvil, as heritable Bailie of Culross, having charged the Lord Kincairn and others, for the taxation of their lands in Culross, conform to the stent roll; they suspended, and *alleged*, That the stent roll contained a fifth part more than the taxation. It was *answered*, and offered to be proved, That it was the custom of that and other benefices at their meeting of making the stent roll, to add a fifth part for expenses and charges of in-gathering the taxation. The defenders *answered*, That if any such custom were, it was against law, and against the liberty of the subject, who could be liable for no payment but by law, or of their own consent, or if any such custom were, it hath been by the consent of the vassals, or at least they have not questioned the same, nor is there any ground for such an addition; for the King's officers being obliged by their office to collect his Majesty's taxation, they can demand nothing of them who paid without process, and if they be put to process, the Lords will modify such expenses as they see cause. The charger *answered*, That such immemorial customs have the strength of law, and that it was done with the consent of all the vassals who convened; and that it was the sus-

In stenting for taxation, no additional sum could be charged for expenses.

No 5.

ders fault that they convened not to make the stent roll, which should not put them in better case than they had convened, or if they had convened and disassented. There is no reason that the disassent of a few should be preferred to the consent of the most part, who, as they may vote in the stent roll for the taxation itself, in which the plurality carries, so must they for the necessary expenses; and all that can be alleged with reason is, that the Lords may modify the expenses of a fifth part, if it be too high. The suspenders *answered*, That law authorised the Feuars, as a Court and judicature, to meet and stent, which implies a power to the plurality; but there is no such warrant for expenses, as to which, the consent of a hundred cannot oblige the disassent of one, or of one absent; and the absents have loss enough, that they have not a vote in their own stent.

THE LORDS sustained the reason of the suspension, notwithstanding of the answer, and found, That no expenses, nor any thing more than the taxation could be stented, to have effect against those who consented not; but they would modify expenses, in case of suspension, as the cause required, but modified none in this case, because a fifth part was charged for more than was due.

*Stair, v. 1. p. 413.*

\* \* \* Dirleton reports this case :

THE Lord Colvil being Bailie of the regality of Culross, and liable to uplift the taxation of that abbacy, and having charged certain of the vassals to pay their taxation; they suspended upon that reason, that a fifth part more than the taxation was stented upon them, on pretence, and in consideration of charges.

THE LORDS found, That they could not be stented to more than the taxation, though the Sheriff and Bailies of regality be liable to uplift the taxation.

Yet it seems hard, that they should be at the charges of raising of letters, and registration of hornings, and such like; and albeit the vassals, who are content to pay their proportion, should not be liable to more, yet it may appear, that it is reason, that when the Sheriffs or Bailies give in what they have uplifted, their charges should be allowed.

*Dirleton, No 65. p. 28.*

No 6.

Taxation for a particular year found discharged by a general discharge to the Sheriff, in the books of the Clerk of Taxations.

1667. December 6. DUKE HAMILTON against The LAIRD of ALLARDINE.

THE Duke of Hamilton having charged the Laird of Allardine for the six terms taxation, imposed *anno* 1633, he suspends on this reason, that four terms were paid by the Earl of Marishall, Sheriff, which exoner him, and all other persons of the shire, and is instructed by the books of the clerk to the taxations. It was *answered*, That the reason is not relevant, because the Sheriffs did or