

DECISIONS
OF THE
LORDS OF COUNCIL AND SESSION,
REPORTED BY
SIR JOHN LAUDER OF FOUNTAINHALL

SUMMER SESSION.—June, 1673.

THE Commissioners to the Parliament for West-Lothian, alias Lithgowshire, (it was Sir Walter Seaton and James Dundas of Morton,) having charged the heritors holding of his Majesty, liable to them (and who are very few there, and not exceeding six or seven,) for payment of the charges and expenses payable to them for their service and attendance at the last Session of Parliament, in 1672, conform to the acts of Parliament; the said heritors were resolving to suspend upon their grounds, that, albeit, it might be pretended, (and that not without some shadow of reason and probability,) in this shire, and those others who came but over their doors to hold the Parliament, that they ought to have no allowance at all; seeing that must be supposed to be given upon the account of the trouble, and more than ordinary expense they were at in being absent from their own homes, and to hold out a rank with, for the grandeur of the kingdom, and the honour of that part which they represented, and in compensation of the damage and loss they sustained in their affairs, by reason of the said necessary abstraction and diversion: which their commissioners could not pretend to; seeing they might both attend, and be few nights out of their own houses: yet they would not controvert that with them; only they were well founded upon the acts of Parliament, to see no more than what was justly due, either craved or exacted; and, therefore, the said charge behoved to be suspended till the Commissioners, in the terms of the 35th act, in 1661, shall produce to them a testificate, under the Clerk of Register's hand,* attesting the

* My Lord Lauderdale was so huffed at this Session of Parliament, in 1673, that they say he discharged the Register to give out any letters of horning to the Commissioners that served at that Parliament for their fees; and let them that pleased pursue it by way of action.

time and days of the Parliament ; for, *1mo*, These days wherein the Parliament did not sit, there can be nothing paid for them. *2do*, If it shall appear any of the Commissioners were absent any of these Session days, there is no reason they should have anything allowed them for that time. *3tio*, Where the said act of Parliament seems to allow them something to carry their charge in going home or coming back, there is no need of it here ; seeing they can either go to Edinburgh from their several interests, or return in two hours' time ; which deserves no consideration. And yet the 18th act, 1641, allows the Commissioners of the Sheriffdom of Edinburgh, for their coming and going, one day's pay, which is 5*l*. ; but that act is rescinded, except in so far as is revived by the act in 1661, which passes over that part of the act 1641, and sundry other articles of it, in silence. As for that point, whether or no they should get allowance for each individual day, from the sitting down of the Parliament to its rising, without adverting to its session, or no session ; if as to this effect, the time of the Parliament must be computed to be *tempus continuum*, (as is done to the King's Commissioner,) or only *utile*, seems somewhat dubious ; for though it would appear hugely reasonable, that it should only be understood of sitting days ; yet the same reason would dictate, especially in behalf of those who come from some distance, that their trouble, their charge, and loss of their private business, is the same, as well the not sitting days as the sitting ; seeing they cannot retire during the interval to their own homes : and which being occasioned for their shire and constituents' interest, their maintenance ought to be upon their score ; seeing *officium nemini debet esse damnosum*.

Advocates' MS. No. 388, folio 215.

1673. *June 1.* ANENT THE SUMPTUARY LAW REGULATING APPAREL.

THIS day being the first day of the Session, and the day at which the sumptuary act regulating our apparel took its beginning, and the Lords having little or nothing else ado, and many of them inclining to gratify the merchants of Edinburgh, so far as was possible ; they fell to consult and debate if the said act prohibiting all clothes made of silk stuffs to be worn by any except the privileged persons, reached to farandains ; which are part silk, part hair. It was fiercely urged by Halton, that they were undoubtedly comprehended under the prohibition ; else the law should be so far from attaining its design, that it should be easily mocked and eluded ; for as it was notourly known to have been made to bridle our exorbitant prodigality and needless expense we were profusely run to, so it is as notour, farandains being once allowed promiscuously to all ranks, we shall be worse than ever ; seeing they are as dear, and of far shorter last than other silks. *2do*, Farandains being a heterogeneous body, wherein silk makes both the noblest, preciouses, and the greatest part ; the same, *jure accessionis*, must draw the hair, as the lesser and more ignoble, to its laws, and must give the denomination to the whole. And so the hair, being swallowed up as an accessory, can enter into no consideration here ; but the stuff must be reputed silk, *ab eo quod est in illo potentius*. Vide parag. 26, et seq. Instit. De rerum divisione, ibique Vinnium. Vide l. 24 et seq. D. De acquir. rerum dominio ; l. 23, p. 2do, et per totum, D.