

The Lords did find, That *decennalis et triennalis possessio* was a sufficient title to the minister, and that the heritors, founding upon a decret, whereby they were to be free from the tack-duty of the teinds craved by the Dean of St Andrew's as parson, they ought to produce the same, and thereupon might defend themselves against the Dean, who did concur in this action, that they might be free of the tack-duty, or otherwise the augmentation restricted; but, until that was produced, the minister had a sufficient right, being fifteen years in possession.

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1675. February 12. The MAGISTRATES of EDINBURGH against WILLIAM ANDERSON.

THERE being a bill given in, in name of the said magistrates and council thereof, complaining; that, notwithstanding there had been a submission, by the whole neighbours of Edinburgh, to the dean-of-guild and his council, and ratified by an act of Privy-council, remitting all differences betwixt the heritors of burnt and ruinous tenements and lands, as to the manner and form of building thereof; and that without offering to advocate or suspend any of their decreets; yet, notwithstanding, the said William Anderson had obtained a suspension; and thereby put a stop to the rebuilding of the lands lately burnt, to the great prejudice of the whole neighbours and inhabitants:—It being ordained, by consent of parties, notwithstanding of the act of regulation, that the reasons of suspension should be presently discussed, the reasons were, that the submission by the whole neighbours and heritors was of the nature of a compromit betwixt private parties, and, in law, is liable to rectification by the Lords of Session, in case of enorme lesion or injustice: but so it is, that, by the decret now suspended, the suspender was heavily prejudged, contrary to law and equity; in so far as the form and manner of building could only regard the security of the houses from fire, and the decoration of the town, and conveniency by public entries, which were all considered, and not questioned; whereas the question before the dean-of-guild court being, that Anderson was heavily prejudged, by imposing a servitude upon the gable of his house in favours of Murdoch, that he might build four chimneys, and so force the suspender to make the wall of his gable much thicker, and his own rooms of less quantity: as likewise, they had given a servitude to another neighbour, Handesyde, to have an entry within the turnpike with the suspender, which he never had before.

It was ANSWERED for the Town, and parties concerned, That the submission to the town-council of Edinburgh, ratified by an act of the Lords of the Privy-council, was of a far different nature from a private submission betwixt parties to arbiters; for this submission being upon the occasion of a late accident by fire, which was like to endanger the whole tenements in the town of Edinburgh, was of a public concernment; and the suspender himself, having submitted with that quality, that he should never suspend, was *in pessima fide* to procure the same: and as to the pretended prejudice, by giving servitudes to neighbours, they were most frivolous; there being decerned a just satisfaction for the enlarging of his gable, a liberty to extend the walls of his house farther than they were

before : and as to the turnpike, it was ordinary that divers heritors entered to their houses by one and the same turnpike, and that it would be a prejudice to the structure to build more turnpikes, when they were needless.

The Lords, having considered the submission to the town-council, bearing, that not only all the houses to be builded should be of stone-work, but that the manner of all the building should be determined by them, without any reservation of any person's right or interest ; and that upon the matter any pretended prejudice was satisfied, they did discharge the suspension, and, notwithstanding thereof, ordained the building to go on conform to the decreet of the dean-of-guild court ; as being a matter of public concernment, and ought not to be retarded upon the account of lesion, to which the dean-of-guild and his council were most proper judges.

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1675. *February 19.* JOHN DAIKLE, English Merchant, *against* DAVID HOME.

THE said David, being cautioner in a bond for the deceased Earl of Home, to the said John Daikle, which bond was made and subscribed at London ; being charged to make payment, did suspend upon this reason, That the principal, the Earl of Home, dying in prison, by the law of England it did liberate his cautioner.

It was ANSWERED, that, notwithstanding of that reason, the letters were found orderly proceeded. *2d.* That there is no such law or custom in England. *3d.* The bond being granted by Scotchmen, ought to have execution here, according to the law of Scotland, where the death of the principal doth not liberate the cautioners ; and, even in England, that cannot be alleged but where the principal was at first incarcerated for that debt.

It was REPLIED, that the letters were found orderly proceeded in the first suspension, because there was no reason then libelled but that the Earl died in prison ; whereas the contrary was notourly known ; and, by an ordinance of the Lords, upon consignation of a special sum, there was liberty granted to suspend *de novo*, upon this reason, that the principal was prisoner, and let out upon a guard, under which he died, and his corpse carried back to the prison to liberate the keeper ; which, by the law of England, did liberate the cautioner.

The Lords, before answer, did grant commission to try the law and custom of England in this last case, by a report of some of the judges of the common law.

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1675. *February 19.* PETER PALLET, Merchant in Bourdeaux, *against* RODGER and VEATCH.

IN an action against Sir George Maxwell, for payment of the remainder of a debt due by a bond granted to Robert Brown, as assignee by James Sanderson, to whom Colonel Stewart in Ireland was debtor in a great sum of money, for