

them at an under value, he might be decerned in as much expense as would make up the £96, which was the sum of the first appreciation.

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1710. *June 30.* The EARL of MARCH *against* The EARL of LEVEN.

THE deceased Earl of March having been made governor of the Castle of Edinburgh, in December 1702, during the Queen's pleasure; and the Earl of Leven having obtained another commission to that place in October 1704, and by virtue thereof having uplifted the whole castle-wards and duties belonging to the constable of the castle for the whole year 1704; the present Earl of March, as having right, pursues my Lord Leven, as he who uplifted that whole year, whereas the first half of it clearly belonged to March, he not being ex-auctorated, nor his commission, till after Whitsunday 1704, was not recalled.

ALLEGED,—March's commission being *durante beneplacito*, the Queen might dispose her favours as she thought fit; and accordingly, in Leven's new commission, she expressly assigns him to the whole crop 1704, by virtue whereof he has got payment. And the castle rent being allocations of so many chalders of victual payable by some of the crown vassals, by an allocation to that particular use, my Lord Leven's right was before the term of payment of that victual, *viz.* before Christmas, or even Martinmas 1704, and so did fall to him in law, though his gift had not assigned it *per expressum*; and the parallel case was decided on the *23d of June 1630*, *Scrymgeour against Denmiln*.

ANSWERED for March,—That these military services do not go by terms, but *de die in diem* for the term they serve. But even on the head of the legal terms he is preferable, seeing his commission was not revoked till after Whitsunday 1704; and so it gave him right to the rents and duties for the first half of that year, just as it does to liferenters and ministers outliving the term: And the contrary would be doubly unreasonable, *Imo*, That March should be deprived of the salary for the time he actually served; and next, that my Lord Leven should get a salary for the time he has served not: and the customs of all the civilized nations of Europe determine in March's favours; and the Queen's assigning the whole crop 1704 to Leven, must be understood *civiliter*; that her Majesty could not take away the *jus quæsitum* to March, by his commission, installing him in the whole perquisites and emoluments of the castle-dues, aye till it were recalled; and if any thing be procured by subreption or obreption from the prince, [it] can never be interpreted to be their will, but must be regulated by law; and none has so natural a claim to the perquisites of an office as he who served for the same.

The Lords found the Earl of March had right to the first half of the year 1704.

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1710. *July 1.* The DEAN of GUILD of EDINBURGH *against* CUNNINGHAM, DUNCAN, and WILSON, Coupers in Leith.

GEORGE Warrender, Dean of Guild of Edinburgh, having convened Cunningham, Duncan, and Wilson, coupers in Leith, and John Wert, smith there, to

enter burgesses, otherwise to go to prison, and have their shops shut up; and they, to prevent distress and save their credit, having granted bond for £5 sterling each of them, as their composition for their burges tickets; and being charged thereupon, they raised suspension and reduction on thir reasons, *Imo*, That the bonds were extorted by force, fear, and concussion; in so far as he threatened them with summary imprisonment if they did not comply with his demand; and this proceeding from a magistrate, who could effectually put his threats in execution when he pleased, being clothed with authority, it was sufficient to incuss and strike dread and terror into such poor ignorant merchants as they were. *2do*, The Dean of Guild's claim was most unjust and unreasonable; seeing the tradesmen of Leith have immemorially exerced their employments without entering burgesses of Edinburgh, or paying any dues for the same, especially seeing they have no benefit by such a useless compliment.

ANSWERED,—Overly threats can never afford just ground of reduction; for, *l. 22 D. Quod metus causa* supposes only actual imprisonment to be *metus qui cadere potest in constantem virum, et minæ solæ non sufficiunt*. And Stair, *lib. 4, tit. 40, num. 26*, seems to require actual restraint to found this action. *2do*, It was *vis licita* (*esto it were true*;) for, Leith being a part of the royalty of Edinburgh, it is under the cognizance and jurisdiction of the Magistrates thereof: and the Deans of Guild have been in use to call unfree traders, and either cause them enter, or else fine them; it being only the town's port and burgh of barony, and Edinburgh their superiors.

The Lords, before answer, allowed a conjunct probation; the pursuer to prove, That it has been the use and custom for the Dean of Guild of Edinburgh to call the inhabitants and artificers in Leith before his court, to enter burges, and pay for the same; and, in case of refusal, to imprison summarily: and the defenders to prove, They have been in use and exercise of their respective crafts and employments without being obliged to enter burgesses and pay composition for the same.

There was a separate point alleged against the Coupers, That they were not only wrights for making barrels, but likewise traded in wines; whereas, it was uncontroverted that none could use merchandise without being first admitted burges.

But, this point not being fully heard, the Lords reserved the consideration of it till it were further debated.

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1710. *July 4.* JAMES SMITH *against* SEMPLE of FULWOOD.

SMITH and Semple. Mr James Home, merchant in Edinburgh, being debtor to Mr Alexander Drummond, writer to the signet, in £578 by bond; and one Ninian Brown, in Caldstream, being also a considerable creditor to him, and designing to adjudge; Mr Drummond, for saving expenses, assigns his debt to Brown, that it might be included in one adjudication. But, that it might not be in Brown's power to dispose of his sum without his consent, he expressly clogs his assignation with this quality, that it should not be leisome to the said Ninian Brown to dispone or transfer his sum to any person whatsoever, without his consent; and how soon the decret of adjudication was obtained, Brown

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