

order to assessment, could not be a rule in this case ; seeing those only who hold *in capite* are liable for the fees of Commissioners to the Parliament.

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1710. *December 13.* WILLIAM CUNINGHAM, late Provost of Irvine, *against*
The SKIPPERS of IRVINE and SALTCOATS.

MR. WILLIAM CUNINGHAM having charged the skippers of Irvine and Saltcoats, upon a decret obtained at his instance against them, before the Admiral, to pay, in the terms of the Act 55, Parliament 1661, forty shillings Scots for every cocket, procured from him ; who is clerk of the cockets of Irvine and Saltcoats, by a liferent gift from the sovereign, purchased before the union of the two kingdoms : the skippers suspended, and raised reduction of the said decret, upon this ground, that, by the fourth and sixth articles of the Union, there is not only a freedom of trade and navigation, but a general communication of all other rights, privileges, and advantages ; and all manner of allowances and encouragements in relation to trade, that obtained in England before the Union, are expressly given to Scotland ; consequently, the skippers there must have the English ease of their cocket-dues.

REPLIED for Mr. William Cuningham,—By the twentieth Article of Union, liferent offices in Scotland being specially reserved, and his office being such ; it must be effectual to him in the same manner as if the treaty had not been, or as he enjoyed it before. The fourth or sixth articles, which only concern burdens and duties, having an immediate influence upon the subject of trade, do not influence the cocket-dues, which are not an imposition upon the subject of trade ; seeing the nature and quantity of the cargo exported and imported doth not alter them ; but are a personal prestation or fee due by the masters of ships to the man employed in that office, for his service in writing them free passes. And it were impracticable to reduce all casual or remote burdens, concerning navigation, to one standard ; for at that rate, seamen's wages, anchorage, and shore-dues, which differ in different places, should be the same every where. Again, even the sixth article excepts duties upon import and export, which the subjects of either kingdom are specially exempted from, by their private rights. Which exception (though the privilege of exemption only be exprest,) must be understood to comprehend all private rights ; as well those extending the burden, as those exempting from it : the reasons for both being the same. Again, that all private grants in favours of particular persons, were understood to be reserved, at least not comprehended under the general article, is plain from several instances. The city of London enjoys particular privileges, both of exemption from, and exacting burdens, not usual in other places. Particularly it is exempted from the prisage, which is a tun of ten, or two of twenty and above, of all imported wines, paid in many places of England, by ancient custom, for the use of the sovereign's family. And though there be no particular exception of the privilege of the East India Company in the articles of Union, these are all without controversy enjoyed as formerly. Again, albeit the privileges competent to the Sugary of Glasgow, and the aquavitæ brewers in Farren-

tosh, in the north of Scotland, be not expressly reserved in the article of Excise; yet the Barons of Exchequer have never yet determined against them. Nay, farther, as *posteriora derogant prioribus*; the twentieth article must be understood to qualify the preceding general rule in the sixth article.

DUPLIED for the suspenders,—The twentieth article respects only offices concerning civil right in matters of property, and not offices about trade; which are liable to so many vicissitudes and changes, as that the dues thereof are still alterable by supervenient law: yea, even offices of civil right, which savour more of the nature of property, have not only been regulated, but quite taken away by subsequent laws. Were not the profits and powers of the commissariat courts abridged, since the Revolution, for the public benefit; albeit the commissaries and their clerks had their commissions for life? and when the council and some other judicatures were abolished, their clerks and macers lost their offices. It is frivolous to pretend, that cocket-dues are not an imposition upon the subject of trade, but only a servant's fee: for by the same reason it might be pretended, that the dues of collectors, surveyors, and other officers of the customs, do as little concern the subject of trade; and that any such officer, having been in use before the Union, to exact double of what the English establishment allows, might continue so to do, on pretence of a liferent gift in his favours. Again, cocket-dues being universal upon all export, and exacted every where, it is not in the case of local or casual dues, which are only exacted at particular places, on the account of certain conveniences obtaining there, and no where else. 2. Though particular exemptions from paying duties (which is the case of the instances of the city of London, East India Company, Sugary of Glasgow, and aquavitæ brewers in the north,) are excepted in the sixth article; the privilege of exacting more than the ordinary duties is no where excepted. And the duty of prisage in England, if any be, is but accidental and local, as the mark upon the pack or tun here at Edinburgh; and so do not concern the case of cocket-dues, which are universal upon trade.

The Lords found, That the charger's liferent-right to the clerk's office was not taken away by the Union; but sustained the reason of suspension and reduction, that now since the Union, he can claim or exact no more than what was paid in England for the cocket-dues, at the commencement of the Union.

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1710. December 29. GEORGE HUME, Younger of Wedderburn, *against* JOSEPH HUME of Ninewells, Advocate.

MR. JOSEPH HUME being obliged, by the reddendo in the charter of great part of his lands holden of George Hume of Wedderburn, to appear at Wedderburn's courts, to be held upon the barony of Hornden, (within which the said lands lie,) or upon any other of Wedderburn's lands within the shire of Berwick; and there to do every thing before Wedderburn and his bailies that he ought in law to do; and to serve him *tempore regiarum proclamationum*, upon Mr. Joseph's own expenses: and Wedderburn having advertised him by a letter, to attend and accom-