

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.

*Vol. II. Page 577.*

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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.

*Vol. II. Page 581.*

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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