

1629. December 17. L. of LAMINGTON *against* BAILLIE.

A decret being given by the Laird of Lamington in his baron-court, against one of his tenants, for a blood-wit, wherein he was convicted and decerned in L. 50 of unlaw ; which being suspended, and the unlaw desired to be modified, *alleging*, that a baron could not, in his baron-court, decern so great an unlaw ; the LORDS found, that they could not modify that unlaw, being decerned for blood, which was tried, and wherein he was convicted, and which was not an unlaw of contumacy for absence ; and found, that by consuetude, barons might decern such unlaws for blood committed.

Act. *Cunningham.*

Alt. ———.

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 501. Durie, p. 475.*

1631. July 22.

DOUGLAS *against* KELLY.

SIR ROBERT DOUGLAS being infest in the lands of Spot by the King's Majesty, with the heritable office of chamberlain and bailiary of the lands and Lordship of Dunbar, and having convened Mr William Kelly, possessor and heritor of the lands of East-barns, and others within the Lordship, to answer to his court ; the said Mr William intents action and declarator for exemption, that he ought to be free of compearance, and acknowledging of these courts, in respect that he is infested *cum curiis* in his lands, and his author Sir John Ramsay, who was thereafter Earl of Hulderness, long before this right of bailiary granted to Sir Robert Douglas ; which infestment was granted for great and seen causes, and worthy services done by the said Sir John to the King's Majesty, so found by the estates of Parliament, and upon dissolution of these lands from the rest of the Lordship of Dunbar ; which infestment being so granted *cum tenentibus, tenandriis, curiis, et eorum exitibus*, and for payment of a red-rose blench holding only, must exeem the said heritors of the said lands, succeeding in the said Sir John's right, and acquired by the said Mr William Kelly, by consent of the King and Council, from all servitude, and compearance in any courts of any bailiary, constituted since his said author's rights ; and the said right of bailiary ought only to extend to such lands of the said Lordship as pay yearly rent to the King, and to such persons as pay feu-farm, and their tenants, and not to his lands, which are given in blench holding, with freedom from all service, and for so worthy causes ; likeas, he being convened before by Sir Archibald Douglas, as bailie of the said Lordship, who is author to the said Sir Robert, he raised a summons of exemption, upon this same reason, which was found relevant by the LORDS, and proved, and he was exempted in all time coming, from his, or any such courts, which decret

No 209.

Found in conformity with Baillie against Torphichen, No 204. p. 7490.

No 210.

A bailie of regality can not unlaw for more than L. 10 for absence from the head court of his regality.

No 210. stands unreduced. THE LORDS notwithstanding assoilzied from this summons, and reasons thereof, and found the said Mr William subject to their courts of bailiary; and found, that the King could not be prejudged by this infestment, bearing *cum curiis*, but that he might thereafter lawfully constitute a bailie within that Lordship, who might have jurisdiction and power to hold courts upon the heritors and possessors of any lands within that Lordship; and that the dissolution of the pursuer's lands, which dissolution made them cease to be of the King's property, but not to be of that Lordship, exempted not the heritors thereof from compearing and answering to the King's courts, and the bailie courts created by the King, notwithstanding of the tenor and holding foresaid, expressed in the said infestment; which right of bailiary was found to extend thereto, and not only to those who were feu-farmers, and paid rent to the King; for seeing the infestment foresaid could not exempt the pursuer from the sheriff-court, no more from this bailie-court; by the which bailiary, the king had dismembered the said lands, which before were subject to the sheriff-courts, and severally had erected the bailiary foresaid, and granted thereto the jurisdiction over this Lordship; but the Lords thought that the pursuer could be no otherwise subject to answer in these bailie-courts, than before this bailiary he could be subject to answer the sheriff-courts, and no further: and for the said decret of exemption, the LORDS found, seeing it was given, the defender not compearing, that it could not prejudge the party here in this process, seeing the King's Advocate, for the King's interest, compeared, and defended the King's right, granted to the defender of the bailiary, which, by the act of Parl. 1609, providing, that any omission of preceding officers should not prejudge the King, but the succeeding officer may oppone thereto, and the same ought to be received by way of exception or reply; and therefore he *alleged*, that the decret foresaid ought not to be respected against the King's right, granted to this defender, and which, in respect of the said act, the LORDS found not prejudged by the foresaid decret, wherein the King's Majesty, nor his officers, were not called; and albeit they had been, yet his Majesty could not have been prejudged thereby. It was found, that no vassal but they that were infest by ward holding, or they who by the condition of their infestments are rentallers, who sicklike, by the clause of their rentals, were subject thereto, were holden to compear at the head courts of the bailiary, and no others of other holding, and that an unlaw of a bailie of regality, for the vassals not compearing at the head courts, could not exceed L. 10.

Act. Stuart.

Alt. *Advocatus* & Nicolson.

Clerk, Gibson.

*Fol. Dic. v. 1. p. 501. Durie, p. 599.*