

each plough of the defender's lands, together with some hens yearly; the ground of which pursuit was founded upon his infeftment of the bailiary, as said is, with the connexes and services belonging thereto, (for these were the words of his right, and there was no special duty insert therein;) and in fortification thereof he offered to prove that he had been in use, and his forbears, Bailies, of receiving of all these particular services and duties from the tenants of the said lands these 50 years bypast. And the defender *alleging*, That there was no ground nor reason to compel him, who was heritor, to do these services to any lands without the baronies, whereof the pursuer was constituted Bailie, and to go to any other of the pursuer's lands, not being of these baronies, neither holden of that Abbot, but of other superiors, and no use of the tenants, how long soever of doing the same, and paying them to these lands, whereto he was noways astricted, either in law or in reason, or by any constitution, either in infeftment or any other writ, could oblige the heritor, the same being done by and without his knowledge or consent, specially his infeftment, not astricting him to any such thing; and the pursuer's right of bailiary not proportioning the same, and these services and duties being differing, and altogether disagreeing from services due to kirkmen's Bailies;—and as to the oats, straw, and hens acclaimed, it were out of all reason to allow this pursuit for the same, as if Bailie services could extend to such predial duties, the same being a part of the duty and profit paid for the ground, which can belong to none but the master and heritor of the ground, or to such persons as have special right *habili modo* to such duties out of the lands;—these allegiances were repelled, and the action sustained, both for these duties of corns, straw, and hens, to be paid yearly to the Bailie, as duties and services due for his bailiary, and also for the special darges acclaimed to be done to the pursuer in his lands out of the barony, in respect of the said 40 or 50 years possession uninterrupted, albeit the possession was only from the tenants, and not from the heritor, nor of his knowledge, which the LORDS found not necessary, and admitted the said summons and reply of possession to the pursuer's probation; but declared they would reserve to themselves, after probation, to determine upon the special services, and quantity of corns and others, which they would decern to be paid in all time thereafter for the said bailie-duties, as they should find reasonable.

Act. *Stuart & Heriot.*Alt. *Advocatus, Nicolson & Neilson.*Clerk, *Hay.**Fol. Dic. v. 2. p. 109. Durie, p. 711.*

1661. July 18. DOUGLAS *against* The TOWN of JEDBURGH.

SIR ARCHIBALD DOUGLAS being heritable Sheriff of Roxburgh, pursues the Town of Jedburgh for the sum of L. 60 yearly for several years due for Sheriff-gloves, and whereof he and his predecessors has been in possession past memory.

No 145.

Forty years
possession
found to give
right to a
Sheriff to

No 145.

exact so
much for
the Sheriffs-
gloves.

of man. It was *alleged*, There was nothing produced to make the defenders liable in payment of the Sheriff-gloves; and use of payment is not relevant to make liable, except the pursuer would condescend that he had right to the Sheriff-gloves.—THE LORDS repelled the defence, and sustained process for the Sheriff-gloves, the pursuer always proving his immemorial possession. See No 149. p. 10892.

Fol. Dic. v. 2. p. 110. Newbyth, MS. p. 37.

1666. February 10.

No 146.

The MINISTER of NORTH LEITH *against* MERCHANTS of EDINBURGH.

THE Minister of North Leith having pursued some Merchants in Edinburgh, importers of herring, of dry fish, killing, and ling, at Leith and Newhaven, to pay 20 shillings of the last of herring, and the 20th part of the killing and ling; it being *alleged*, That such a burden could not be allowable, because the teinds were taken where the fish was taken; *2dly*, That it could only reach the parishoners of North Leith, not the merchants of Edinburgh; and, *3dly*, That they had frequently traded free of such a burden.

THE LORDS having ordained the pursuer to adduce evidences by writ or witnesses, what possession they had, and the defenders what liberty they had; and having heard the testimonies of the witnesses, with an old decret for the same particulars, but not against the merchants of Edinburgh, nor for dry fish, they found 40 years possession proven of the said burden, and therefore decerned.

Fol. Dic. v. 2. p. 110. Stair, v. 1. p. 354.

1668. July 22. JOHN BOSWELL *against* The TOWN of KIRKCALDY.

No 147.

A proprietor
of burgh
acres found
liable on ac-
count of im-
memorial
usage, to pay
stipend to a
second mini-
ster, although
he paid his
whole teind
to the first.

JOHN BOSWELL having some acres in the town's lands of Kirkcaldy, and some houses in the town, but not dwelling within the town, or parish, nor using any trade therein; pursues the town as having unwarrantably stented him for his stock and trade, he not dwelling in their burgh; *2dly*, For unequal stenting him as to his lands; *3dly*, For stenting him for the town's debts, as for the sums paid for their erecting harbours, and some teinds they bought; *4thly*, For stenting him for the second minister's stipend, whereas he paid the whole teind to the first minister, nor dwelt he in the parish, nor consented to a second minister, or to his stipend, and for unwarrantable quartering on him and his tenants, and this since the year 1644. It was *answered* for the defenders, That they denied stenting of the pursuer, for any stock or trade, seeing he was no inhabitant; or that they quartered on him unwarrantably; but *alleged* there was now no ground after so long a time, to quarrel the inequality of their stent rolls, which were made by 15 sworn men, especially after so long a time; for