

1671. *July.* ANDREW HALDEN *against* NICOL CAMPBELL, stabler.

NICOL CAMPBELL, stabler, being cautioner for Samuel Meikle to Andrew Halden in a bond of L.1900, and being charged thereupon, suspended (as also raised reduction) upon this reason; that the bond can receive execution against him for no more but allenary the sum of L.1200, because he not knowing to subscribe himself, gave command to the notaries to subscribe for him as cautioner in the foresaid sum allenary, of L.1200, and he designed no more; and they have bound him as cautioner in the whole: and this command he offered to prove by the notaries and witnesses inserted their oaths.

Much was disputed against the relevancy of the probation of the reason, tending to take away a bond by witnesses. Yet the Lords having regard to the suspender's illiterature, who could neither read nor write, and that he has been *vir integræ famæ*; before they would give answer to the relevancy, (though they inclined much to sustain it in this *juncto* of circumstances,) they ordained the notaries and witnesses to be examined upon the reasons; as also those that wrote the bond and were present at the communings. Upon whose depositions the bond was restricted, and Nicol assoilyied *pro reliquo*.

Advocates' MS. No. 230, folio 106.

1671. *July.* Anent the DIETS of the SESSION.

ABOUT this time, and after, there was a great rumour about the changing of the diets of the session, by taking away the two months of summer session and adjecting them to the winter, which was thus to sit five or six months together, and all the remanent of the year to be vacancy. Much was pled for the convenience of such an alteration; but if the inconveniences that would ensue thereon be also impartially weighed, in my judgment they preponderate; for *1mo, Omnis mutatio etiam in melius est periculosa, et in rebus novis constituendis evidens et summarum utilitas esse debet antequam recedatur ab eo jure quod diu æquum visum est; l. 2. D. de Constitutionibus Principum*; and our predecessors, who modelled a summer and a winter session, were every whit as knowing and as rational as we. * *2do*, If the session sit down on the 1st of October then ye call in the lieges to Edinburgh in one of the throngest months of harvest that they have, which by law is ever appointed to be feriot time; *l. 1. per totum, D. de Feriis; item toto titulo Codice*. And though within these fifteen or twenty years we

* And old customs, like old lived men, are presumed to be of a sound, equable, and wholesome temperament and constitution. By the Town Council books, it appears, in 1630, endeavours were made by some for a change of the Sessions' course, (though I believe not this that is intended now.) The Council writes to Mr. John Hay, their Commissioner at London, to deal with his Majesty to stop the same;—that their being mewed up within town two of the pleasantest months in the year, and in effect that which is all the summer we have in Scotland, is most destructive to our healths, and impedes hugely the improvement men might make of their estates; and those who are at any distance have no benefit of them at all, but must furnish themselves at Edinburgh. Yea, the summer session is the cause of all our prodigality in apparel, house mails, and other ways; yea its abolishment, might be instructed, would be £20,000 Sterling a-year in the lieges' way.—See sixteen reasons against taking away the Summer Session, in a paper beside me, drawn by

have learned from the neighbour English, to labour soon, whereby our harvest is more early than it was wont to be, yet there is no man will deny but the month of October (and this very year is a demonstration of it) wins much of the corns in Scotland. And the like inconvenience shall follow if ye take in the month of March, which is the hottest month for labouring the ground in the year. *3tio*, The weill of the kingdom's metropolis, of the city of our solemnities, must also be here considered, in so far as it draws not with it any considerable prejudice to the rest of the country; and Menenius Agrippa his apologue to the commons of Rome, would be remembered: The rest of the members will not do well to withdraw sustenance from the belly,* upon the envious pretence that they have all their several functions and offices tending to serve it, and that it is idle; for in famishing it, they will famish themselves, and in what proportional degrees it decreases shall they diminish by these same. Edinburgh is the centre where our gentlemen's younger children terminate for education; and by an amicable reciprocation, the circumferences of this centre reach again over all the country; and there be few gentlemen in Scotland who have not some interest therein, either by being issued originally therefrom, or by having some of their twigs engrafted therein; so that it is deservedly accounted the *communis patria* of all Scotsmen; and hence the testaments of all dying out of the country are confirmed there, persons furth of the country are summoned there, and such like. (*Vide infra*, No. 387, *Kinloch* against *Ramsay*, *February* 7, 1673, in the duply.) Yea what privileges and badges of sovereignty old Rome had, the same, by common consent of all nations, have been stated upon the respective metropolises of kingdoms. Now to fetch so intolerable a prejudice as this would prove, upon Edinburgh, for satisfying the lust and pleasure of some few, pretending themselves to be interested therein, were a thing immeasurably unjust, and which in no equity can be craved; especially considering, that the whole country, within thirty or forty miles of Edinburgh, yea the whole north and south, the one for their lambs, and the other for their corns and kye, would be so far from having any benefit by such a change, that, to the contrary, the same would redound hugely to their loss and disadvantage; in so far as there would be no such consumption of victual, and these other above-mentioned commodities in that case as now; seeing beer and ale are most drunk in the summer, and if the session sat only in winter, all who could reach wine would rather drink of it. Yea by it the King would be hugely prejudged in his customs of wine, cloth, and silks, for which there would be no such vent as is now. But the King has dispensed with his part of the loss by the sumptuary law now past. *4to*, The spirits of men, like to bows, if they stand in continual bentsell, they slack and spoil; and therefore, the very four months of the winter session, as it now stands, were judged too long for the Lords and Advocates' heads to run constantly on business; and the Yule vacance was introduced not so much upon a principle of religion, as for a relaxation to men's minds; and if the length of four months afford tedium and lassitude, how much more if it were six? That it is absurd to think a nation, for the space of six or seven months together, should want a visible form of a supreme court of justice. (Yet they pretend the town of Edinburgh will have no prejudice, because the vintners declare they

way of information for the members of Parliament in August 1681; though the Parliament then by their act, without respect to these reasons, took the Summer Session away.

* Livius lib. ii. p. 27. Plutarchus, in *Coriolano*, Florus lib. i. cap. 23.

had rather have one month more in winter than the two months of summer session. *2do*, This orderly way of discussing causes by the book of enrolment, will demonstrate, say they, the unnecessariness of the summer session, since the fourth month of winter, at least fifth, will discuss all the causes in Scotland, and [drive] us in a short time to rising at eleven o'clock for want of ado; especially that part of the regulations being observed, That no causes within 200 merks be pursued in the first instance before the Lords.) *5to*, If a man suspended a charge of horn-ing in January or any of the months ensuing, he might by this new model sing a requiem to himself till that time twelve months, for sooner *per rerum naturam* it could not be heard; but as it stands now such suspensions may be got discussed in the summer session. Siclike if I warn a tenant to remove at Whitsunday, I could not, by the said overture, get the legality of my warning declared, nor a decret of removing sooner than November or December, whereas now I may have my decret in my hand ere the last of July. Neither solves it the inconvenience to say, I may pursue these things before the inferior Judges, who sit at all times; for *1mo*, There be many actions to which they are not competent; *2do*, In the rest, the defender will either procure them advocated or suspend them. Now how great prejudice the lieges may sustain in the delay of their actions which merit summary process is very conceivable. I shall only give one instance. Conform to the late act of Parliament, I charge my debtor to the effect I may thereafter comprise and come in within year and day of some anterior comprisers; the debtor gets my letters suspended simply, which will comprehend a suspension of apprising as well as of personal execution; ere I get the suspension discussed, year and day expires, and so I lose my diligence and the benefit of the act of Parliament anent comprising within year and day, and will have right allenarly to the reversion. I think the debtor's dole *et mora* in suspending, ought not to postpone his diligence. *6to*, *Nihil tam naturale est quam eo genere quidque dissolvere quo colligatum est; l. 35. D. de Reg. Juris.* *Igitur*, the diets of the Session being established by a continued series of acts of Parliament, renewed from time to time; the same cannot be altered by our Lords' regulators nor by the King, except in face of Parliament assenting thereto. *7to*, Though it appears by act of sederunt on the 20th of January 1586, and other places, that the diets of the Session have been otherwise constituted than they are now, yet they cannot say but there was ever a summer Session. And the regulators would remember that they have wronged the town of Edinburgh enough already by their regulations, though they do not this additional wrong too; and by nothing so much as that of the enrolment, though a secret stroke.

Advocates' MS. No. 231, folio 106.

ANENT LOOSING ARRESTMENTS.

AN arrestment laid on by virtue of a decret or a registrate bond, (the registration being a decret of consent,) cannot be loosed by offering to find caution; and it is only arrestments laid on upon dependences, or where there is no decret, that