

of Forfar, and of the bounds adjacent, he might punish transgressors, and might preserve the quiet and good order of public fairs against the disorders of these ruder times; yet now the Castle being razed and demolished, and the people civilized, there is no ground to encroach upon the freedom of an ancient Royal Burgh, but to suffer them to enjoy their customs and jurisdictions as other Royal Burghs in the kingdom; *2do*, Though any thing could be claimed upon the account of that office, yet it could not be extended beyond ancient possession; and by the witnesses for both parties, it appeareth, that the Town hath lifted their own customs, that they paid only 20 merks yearly to the Constable, and that he used jurisdiction only as to disorders in St James's Fair; but now the Town having lately obtained from the King four other fairs, with all their customs, he hath no interest therein. It was *answered*, That the office of Constable had a known power to ride and preserve the peace of public fairs, and, on that account, to receive the customs thereof, and to exercise jurisdiction at all times, which is common to all the Constables in Scotland, whereof there were many; so that, unless these privileges be lost by prescription of liberty, the right continues, and any possession preserves the same; and, as to the new fairs, they are but lately granted, and the Constable's office extends to them as well as to the old fair.

No 14.

THE LORDS found, by the writs produced, and testimonies adduced, that the Constable of Forfar had right to proclaim St James's Fair, which hath always been proclaimed in his own, the King, and the Town's names; and that the Constable gave commission to the Provost and a Bailie to lift the customs and americiaments of St James's Fair, *in anno* 1625; and since that, the Magistrates have constantly raised the same, and paid 20 merks yearly to the Constable therefor; and that the Constable had the keys of the Tolbooth, and exercised sole jurisdiction as to the disorders done during that fair; but found, that he had no interest in the later fairs, nor any customs thereof, nor in any but in St James's Fair: They found also, that neither party had right of property to the Castle-hill; but the Town had been in ancient possession thereof, and the Constable to keep Courts thereon, reserving to the King the right of property, as accords.

*Stair, v. 2. p. 452.*

1678. June 19.

AGNES WILKIE *against* Mr HENRY MORISON and the CLERK of the BILLS.

No 15.

AN arrestment being loosed on insufficient caution, the LORDS refused a bill, craving a warrant for commanding more sufficient caution, though they had granted it between Mosman and Monteith; only here they gave the Clerk to the Bills a reproof.

*Fol. Dic. v. 2. p. 293. Fountainhall, MS.*