

utrumque. This was not decided, but transacted. It was *casus judicis arbitrarius.* *Vide infra, 18th June 1680, Oswald.* Vol. I. Page 80.

1680. February 3. JAMES SUTHERLAND *against* JOHN GALLOWAY.

IN the case betwixt James Sutherland, late Treasurer in Edinburgh, and John Galloway, the Lords shunned to determine whether or not the Town of Edinburgh might legally and warrantably imprison the tacksmen of their common good, and their cautioners, summarily, for their deficiency in payment, without registrating their tack or charging them thereon; in respect not only Edinburgh, but likewise the other royal burghs, are in constant use to imprison summarily, providing it be for their common good allenary. Vol. I. Page 81.

1680. February 3. JOHN JONES, Procurator-Fiscal of Glasgow, *against* —
WOOD, Relict of Bailie Fairie.

IN the action betwixt John Jones, Procurator-Fiscal of Glasgow, and — Wood, relict of Bailie Fairie there; she ALLEGED, Though she had no right nor assignation to the reversion, yet she, as liferentrix of the tenement, might redeem Jones's infeftment of annualrent, and so remove impediments that hindered her from possessing.

ANSWERED,—*Esto* she did redeem, she must ascribe her possession, *primo loco*, to the extinguishing of this infeftment of annualrent; for, if she should buik for her liferent, and suffer this annualrent to run up unpaid, if she lived eight or nine years, it would exhaust and absorb the whole value of the tenement; and so would recur against the fee which the said Jones had acquired from the heir, and so, in process of time, would render his fee unprofitable; which iniquity she ought not to be permitted to do.

This case being reported on the 5th of Feb. 1680, the Lords found, that Jones's infeftment of annualrent was preferable to her liferent, and that, if she redeemed, she behoved to ascribe her possession *primo loco* to the said annualrent; and, if the rent of the tenement exceeded the said annualrent, then to her liferent *pro reliquo*: and found his infeftment of annualrent preferable to her, both *quoad* the annualrent and the stock or principal sum.

Vol. I. Page 81.

1680. February 3. ANENT A CHAPLAIN GOING TO CONVENTICLES.

A CHAPLAIN pursues for his year's fee. ALLEGED,—After you had staid three or four months in my house, I discovered that you went to conventicles; and so, by the Acts of Parliament and Privy Council, I was not *in tuto* to keep you; and therefore I put you from my service, and I am willing to pay *pro rata temporis* that you staid.

ANSWERED,—The King's indemnity purges and pardons his going to conven-

ticles in time past, *esto* he had gone ; and *per eum non stetit* that he abode not the whole time.

The Lords decerned for the whole year's salary.

Vol. I. Page 81.

1680. *February 4.* The DUKE of HAMILTON *against* The TOWN of LINLITHGOW.

DUKE Hamilton raises a declarator against the Town of Linlithgow, that he had the liberty and privilege of a free port and harbour at his regality of Borrowstowness, and might load and unload there, notwithstanding that the King's customhouse, which hath been these thirty years at Borrowstowness, is now removed to Blackness, and that the Town of Linlithgow are building a pier and harbour at Blackness.

ALLEGED,—By the 84th Act, Parl. 1503, and 24th Act, Parl. 1633, the merchants must only pack and peil at free burghs : now, loading and unloading is the same thing with packing and peiling : (This was denied by the Duke's advocates, who called "packing" the stowing of goods in packs, and "peiling" they did not agree what it meant : some thought it was the furring of goods like a pile of wood :) and Borrowstowness is not a free burgh.

ANSWERED,—By the Act of Parliament 1672, burghs of regality and barony have all the privileges of burghs royal, except as to some staple commodities, and so may load and unload. *2do*, Blackness is not so commodious a haven as Borrowstowness.

REPLIED,—Since that fatal Act of Parliament, the burghs have ever reeled, as exceedingly abridged in their privileges ; but it does not extend to this case ; and Blackness is a more convenient station for ships.

This being advised on the 10th of Feb. the Lords, before answer, ordained a visitation to be made of both harbours, and whether Blackness is a more capacious and secure receptacle for ships than the other ; as also probation to be led anent the Town of Linlithgow's possession and custom of going, loading, or unloading at Blackness, or at Borrowstowness.

Vol. I. Page 81.

1680. *February 4.* ANENT THE PRESCRIPTION OF SERVANTS' WAGES.

ONE having served fifteen or twenty years ; within a year after leaving the service, pursues for all the fees, and offered to prove the service by witnesses, like a current account, whereof the last article is within three years.

REPLIED,—It is not alike ; for, in current accounts, it is not presumed that any of the articles are paid ; but it is otherwise in servants' fees. And, at this rate, a minister might pursue for twenty years' stipend back, since he was minister there, and, in respect of the currency, pretend that the years above three are not prescribed, and make them pay it if they want the discharges, seeing, *quoad modum probandi*, he may prove it by witnesses ; which were dangerous and absurd. This went to the Lords' answer.

Vol. I. Page 82.