

1693. December 7.

HARY YOUNG, and other FEUARS of Kinross against Sir WILLIAM BRUCE.

HARY YOUNG, and other Feuars of Kinross, pursued Sir William Bruce, their superior, to hear and see it declared, *imo*, That they ought not to pay the whole cess of their feus, seeing he got more than the half rent of the lands for his feu-duty, and so he ought to bear a proportional share of the public burdens effeiring to his share of the true rent of the lands: THE LORDS found, that effeiring to their several proportions of the rent, the superior must pay a part of their cess, conform to the valuation of the lands, and that the feuars, (who were little better than heritable tenants) could not pay the whole cess; for albeit the rents might be, if the lands were set, 600 merks by year, yet the vassals paid of this 3 or 400 merks yearly to Sir William their superior. The second branch and article of their declarator, was, that for civil debts they were not bound to answer summarily in his courts, without a written citation, and a sight of the libel, and a charge to pay; whereas he immediately decerned them, without giving them time to answer, and then incarcerated them, which, though usual in criminal cases of riots and fines, yet not in matters of debt. Citation, and the *inducia deliberatoria* are *juris naturalis*. Though the LORDS inclined to declare, yet the President carried, that, before answer, they should prove the custom of that barony and regality-court, in regard Sir William, nor his procurator, did not answer then.

No 19.

Where the feu-duty payable to the superior is truly part of the rent of the lands, the public burdens must be borne proportionally by the superior and vassal.

1693. December 13.—In the cause, Young against Sir William Bruce, mentioned 7th current, the LORDS decided another article of the feuars' declarator, and found, that carriages and other such indefinite prestations and services, contained in their charters, prescribed every year, if they were not annually required and exacted; and that two years carriages, &c. could not be demanded or laid upon one year, because they may have horses for single carriages, that cannot give double ones, if they be deferred or let run up; but did not extend this to Cain-fowls, and other casualties; but even as to such, they ought not to extend three years conform to the act in 1579, for triennial prescription of small debts, &c. See SERVICE (PERSONAL.)

Fol. Dic. v. 2. p. 291. Fountainhall, v. 1. p. 576 & 577.

* * * A similar decision was pronounced, 25th February 1696, Treasurer of Edinburgh against Feuars of Burrowmuir, No 6. p. 4188. *voce* FEU-DUTIES.