

1697. *Jan. 8, and Feb. 17.* ANDREW RAMSAY *against* The MAGISTRATES of AYR.

January 8.---WHITEHILL reported Andrew Ramsay, Tacksman of the mills of Ayr, against the Magistrates of that burgh, for their contempt of the Lords' authority, in stopping his multure-malt after a suspension past and intimated. Their pretence was, that, by an imposition granted to them by the Parliament, they had the power of exacting a merk out of every boll of malt grinded at their mills; and they claimed, that the malt he got for his service, as miller, whether the multure, the bannock, or lock, might also pay this duty. He contended, his multure being only a part of the malt brought to be grinded, and having paid *eo nomine*, it cannot pay over again, when he gets it separate for his work, else this would be double exaction.

The Lords inclined to think this an extortion, but had no occasion to decide it here, (because that came in to be argued in discussing the suspension,)—all before the Lords at present being the complaint of the *spreto mandato*, and contempt: as to which they declared they would reserve it to the conclusion of the cause; but saw grounds to refund the poor man Ramsay's damages, and allowed him to produce a probation *talis qualis* thereon; and, if they saw need, they would take his oath in supplement, and give him large expenses.

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February 17.---In the complaint at Andrew Ramsay's instance against the Town of Ayr, mentioned January 8, 1697, the Lords shunned that point,---whether his passing from the suspension was simple and absolute, or copulative with the clause whereby they submitted their difference to arbiters, so as if the submission did not take effect, it is presumed to be his meaning, that his suspension should revive, and he might make use of it; but the dubiety of the clause, passing from the suspension as connected with his submission, moved the Lords to assolyie the Magistrates from being guilty of contempt of their authority, in proceeding, notwithstanding the suspension, which they looked upon as passed from; but yet allowed the Ordinary to consider the said Andrew's damages, as they had done before; for, though burgesses are not to oppose their magistrates, yet oft times, by terror and concussion, they are made to pass from their rights.

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1697. *February 18.* SIR JOHN MALCOLM of INNERTEIL *against* COLVIL of BLAIR, LINDSAY of DOWHILL, and Others.

I REPORTED Sir John Malcolm of Innerteil against Colvil of Blair, Lindsay of Dowhill, and others. They had pursued him for a spuilyie of some sheep; he, by way of defence, repeated a declarator against them, bearing he stood infeft in the property of the hill of Bannarty, off which thir wedders were taken; and though the defenders had, in their feu-charter from him, a clause *cum communi pastura*, restricting them to such a definite number of sheep, yet he and his predecessors, past memory of man, had the right and privilege of ranging that hill for two effects: 1^{mo}. To see that they did not over-charge the hill, nor exceed