

1706. *February 12.* The VISCOUNTESS of OXFORD and OTHERS *against* SIR JAMES DALRYMPLE of KILLOCH.

LORD Prestonhall reported the bill of advocation by the Viscountess of Oxford and Others against Sir James Dalrymple of Killoch. Sir James Dalrymple having bought the barony of Cousland, from Robert, last Viscount of Oxford, in 1699, the disposition bears a clause disposing to him the seats, desks, and aisle in the kirk of Cranston, belonging to the barony of Cousland; and Sir James, in October last, offering to take possession, he was debarred, *manu forti*, by some of my Lord's tenants, gathered by John Irving the bailie, for that purpose. And thereon Sir James pursues them before the Sheriff of Mid-Lothian for a riot and intrusion; wherein my Lord, and, after his decease, Lady Christian his daughter, and Mr William Maitland her husband, compeared for defending the tenants; and

ALLEGED,---That no more was designed by that clause but only that the tenants of Cousland were to sit on the back-seats as they were in use to do before, but nowise to give away the fore-seat, which was without the aisle disposed, and within the body of the kirk. *2do*, The sheriff was incompetent; this dipping upon property, and a competition of rights, to which the Lords were only proper judges. *3tio*, What the tenants did was by their master's warrant, and so they ought to be assoilyied.

ANSWERED to the *first*,---The clause is opposed, disposing the whole seats without any reservation; *et qui omne dicit, nihil excipit*. To the *second*, The Viscount had prorogated the jurisdiction by proponing peremptory defences; and, it being a riot, it was more proper for the sheriffs *in prima instantia*, who have a mixed jurisdiction, partly criminal and partly civil. To the *third*, wrong could have no warrant.

The sheriff having repelled thir defences, and admitted the libel to probation, there is a bill of advocation given in by the Viscountess and her husband, for her tenants, upon incompetency and inquiry. But the Lords refused the bill, and remitted it back to the sheriff; and, if there were any ground, they might be heard by way of suspension.

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1706. *February 12.* The TOWN of EDINBURGH and JAMES MURRAY *against* The EARL of CROMARTY, ROBERT BLACKWOOD, JAMES BALFOUR, and ALEXANDER AINSLIE.

LORD Register reported the Town of Edinburgh, and James Murray their tacksman, against the Earl of Cromarty, Mr Robert Blackwood, James Balfour, and Alexander Ainslie, owners and masters of the glass manufactory at Leith. The Town of Edinburgh have, by their most ancient charters, right to the shore-dues at their port and harbour, for repairing and upholding the pier; and, by a gift from King Charles I, in 1636, ratified in the Parliament 1661, they have right to exact a merk per ton, of all foreign goods imported at Leith. And

having pursued the said Alexander Ainslie to pay these dues for the goods he imported for the use of his glass manufactory :

He ALLEGED Absolvitor,---Because, by the 40th Act 1661, all materials imported for manufactories are declared free of custom, excise, and other public dues ; *2do*, The merk per ton being only a grant from King Charles I, without consent and authority of Parliament, the same is null, and contrary to law ; as is declared by the claim of right. And this farther appears by the 54th Act 1587, discharging all impositions whereof there was no legal warrant shown ; and, by the 57th Act 1661, all impositions not allowed by Parliament are discharged ; so that both positive law and the natural right of the subject concur to liberate them from this illegal impost. And, as to the shore-dues, they cannot be liable, for they uphold their own pier.

ANSWERED,---The privilege of manufactories is only an exemption from dues payable to the crown, but not those given to private parties, or corporations and societies ; and the claim of right only condemns those gifts of two pennies on the pint of ale, which the most part of royal burghs had obtained from King Charles II. and King James, without the consent of Parliament ; but can never be extended to what our princes had bestowed for the common good of burghs, to defray and support their necessary incident expenses ; else this would draw in question what belongs to the most part of the royal burghs in Scotland.

The Lords thought the general case of great importance, (though not in this special one of the glass manufactory,) there being a danger threatened, on the one hand, to the interest of many of the burghs, and as much inconvenience on the other hand, if such grants, not allowed by Parliament, come to be sustained by a decret of the Lords. Therefore they ordained the case to be argued in their own presence.

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1706. *February 13.*

A SON of Ballantine of Craigmuir being suspected of counterfeiting the signet, there was a warrant granted to James Napier, a messenger, to apprehend him : Which he did, but ALLEGED, That above twenty men came and rescued him. Whereupon the said Napier being called before the Lords, for suffering him to escape, and some presumptions appearing that he had colluded, it was proposed to send him to prison. But it was thought fitter to leave him at liberty to search if he could recover the prisoner ; and so a bond was taken of him, under the penalty of 500 merks, to appear when called for. And it was thought convenient, to prevent such forging in time coming, that the writers should use better wax, and the impress of the signet should be deeper than now it is, and the presenter of the summons or letters should subscribe his name on the back of the paper : and warrant was given to her Majesty's advocate to raise a criminal libel of falsehood against the said Mr Ballantine. All the difficulty was, how to furnish him with probation farther than his seeming to own the guilt by his flying ; which an assize would scarce sustain alone, if he should compear and deny his accession thereto.

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