

3^{tio}, That the coming up and down of boats and ships amongst the river could not be stopped nor hindered on pretence of wronging his fishing. 4^{to}, That the anchoring upon these stells was *in æmulationem*; seeing it appeared they had other stations and parts to harbour at safely besides this; unless they were driven in upon his stells by storm or stress of weather. 5^{to}, They ought not to cast out their ship-ballast nor fish-guts at his stells, seeing they might as conveniently throw them elsewhere. 6^{to}, That Muirton could answer only for the prejudice done by his own people, and not for strangers who resorted there for trade. 7^{mo}, The Lords inclined to think it was *in æmulationem* of Lethem for Muirton to plant his muscle-scalps in or near his stell-fishing; but it being contended, that his right to the scalps was more ancient than Lethem's right to the fishing, the Lords forbore to determine this till they came to advise the rest of the probation.

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1707. *March 22.* JAMES SMITH *against* JOHN LENNOX.

JAMES Smith, glover, against John Lennox, deacon of the incorporation of the skinners and glovers in Edinburgh. Smith being a freeman in that trade, but using the help of one Simpson and other unfreemen, he is convened by the trade for contravening the rules and acts of their calling; and Bailie Cleghorn offering him a bond to subscribe for observing their rules; and he, declining to do it, was, for his disobedience, put in prison, and 18 pairs of kid-leather gloves taken from him. Whereon he gives in a suspension, and charge to set at liberty, with a declarator, that, being a freeman, he had as much liberty to work as any of them; and that their rancour at him was, because he sold cheaper than they. His reasons of suspension were, that the warrant for his imprisonment was illegal, contrary to the Act of Parliament 1701, not bearing the cause. 2^{do}, That no bonds can be imposed on the lieges but what are enjoined by public authority.

ANSWERED,—Their rules and constitutions had brought the manufactory of gloves to great perfection; one of which was, to name visitors and censors to debar unfreemen, and to try the sufficiency of the work; and that this Smith both employed unfreemen and likewise vended most insufficient work, and therefore was imprisoned.

The Lords thought it too summary; and therefore ordained him to be set at liberty, without caution or consignment.

Then Smith gave in a bill, ALLEGING, That, by their bangistry and oppression, the trade had damnified him in £200 Scots by his imprisonment and loss of trade; and therefore craved that both the deacon and bailie might be condemned in his expenses for their illegal and irregular procedure.

The Lords referred it to the Lord Forglan reporter, to modify his damage, after hearing parties, if he saw cause.

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1707. *March 27.* The UNIVERSITY of GLASGOW *against* HAMILTON of DALZIEL.

THE university of Glasgow having purchased the lands of Shields and Burn-

grange, which hold of Hamilton of Dalziel, they present to him a charter and a year's rent, and crave to be admitted vassals in these lands, for stopping the casualty of nonentry, &c; as was found, *9th February 1669, Black against French.*

ANSWERED for Dalziel, the superior,—They being a community and corporation, he was not bound in law to receive them; and they never dying, it was to cut him off from all the casualties of his superiority in time coming; *et nemo debet lucrari cum alterius jactura.*

And they having taken instruments on his refusal, applied to the Lords for letters to charge him, ALLEGING,—That the laws, and Acts of Parliament, obliging superiors to receive apprisers and adjudgers for a year's rent, made no distinction whether it was a community or private party; and sometimes were bound to receive more than one as vassals, which stopped their casualties to the death of the last of them.

The Lords considered this as a general case, where the road was not yet pathed. Therefore resolved to hear and determine it in June. Stair, *Instit. book 2, tit. 2, § 41*, states the case, and shows it yet undecided; and proposes an overture and remeid, that the corporation name a person to be their feoffee and trustee, whom the superior shall receive, and by his death the casualties shall open: and this I find to be the French practice, as is observed by Molineus *ad Consuetud. Paris.* and Basnage, in his Commentaries on the Customs of Normandy; and which they call *un homme vivant et mourant*, who represents the corporation, and salves the superior's right from being wholly extinct and absorbed.

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1707. June 19. JOHN STEWART OF BLACKHALL *against* THOMAS MACGOWAN and OTHERS.

MR John Stewart of Blackhall against Thomas Macgowan, provost of Irvine, and Others. In the ranking of the Creditors of Cuningham of Corshill and Robertland, Blackhall craved preference, on this ground, That he, being cautioner for them, had got a disposition for his relief, and thereupon stood infest long before any of the other creditors had done diligence.

ALLEGED for the Adjudgers,—That the disposition produced bore this express clause,—That the granting thereof should be nowise derogatory nor prejudicial to any former rights granted by Corshill to his lawful creditors their just and true debts owing by him to them;—which being the precise words of the reservation, sufficiently saved all the true and lawful creditors, though only secured by personal bonds.

ANSWERED,—The said clause could never be strained to that sense; but alienarily reserved the real rights, and creditors to whom Corshill had given heritable bonds and infestments prior to this disposition; else Blackhall got nothing at all; and *verba debent aliquod operari.* And how idle would it have been with the one hand to get a security for his cautionaries, and with the other to bring in all the creditors *pari passu* with him; which rendered his right not worth a sixpence: and the sense of the words can go no farther, declaring this right shall not prejudice the rights of other creditors. These words must be understood of rights of the same kind and nature in both parts of the clause, *viz.* of real rights, that they may be homogeneous and analogical to one another.