

1708. *December 30.* The TOWN of EDINBURGH, BOYLE, MONTGOMERY, &c. *against* ANDREW ANDERSON.

THE TOWN of Edinburgh, and Mr Boyle, Montgomery, &c. taxmen of the Town's imposition of two pennies on the pint of beer and ale vented and brewed within the Town and liberties thereof, pursue Andrew Anderson, brewer in Leith, for payment of his excise ; and refer the quantity of his brewing to his oath.

ALLEGED,—I am content to depone as to all the liquors I brewed, except as to small ship-beer, as to which, you can exact nothing for it, being sold at ten pennies the pint, and, if you exact your two pennies, it is impossible that ships can be furnished, seeing the malt, fire, and hops cannot be afforded at that rate : So the Queen's men of war and merchant ships will be forced to go and victual elsewhere ; which will ruin and destroy trade, and prejudice the Town of Edinburgh and Leith exceedingly.

ANSWERED,—They opposed the Town's gift in 1693, bearing a right to two pennies per pint on ale, brewed within their bounds, without exception, whether the liquor be strong or small : and though they pay two pennies on the ship-beer, yet they can never be losers, because of the great vent of that kind, and the vast quantities they brew of it : And in England, which now, since the Union, must regulate our excise, it pays with other beer.

REPLIED,—Their gift is restricted by these words, “ over and above the annexed and additional excise ;” which implies it must be collected in the same manner : but the Queen, with us, exacts nothing for ship-beer ; and the second Act, 1696, expressly exempts it from paying any duty of excise ; which, *a fortiori*, should much more militate against the Town's gift, especially seeing they exact nothing for penny-ale or plack-drink : and the tacksmen were so conscious of the extortion in this point, that they dispensed with this very man as to ship-beer, as is evident from a discharge of John Dickie, their collector : and though they ascribe this to their lenity towards the brewers, yet these sort of men are not masters of great tenderness or mercy.

Many of the Lords inclined to free this small beer from the Town's impost, and thought it extended only to what was consumed within the Town's liberties, which this was not : therefore, they looked on it as a fit subject for accommodation, and named some of their number to try it ; especially seeing the tacksmen were willing to take half excise for that small ship-beer, viz. two pennies on the quart, for encouraging shipping and trade. *Vol. II. Page 476.*

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1709. *January 14.* CAPTAIN WIGHTMAN *against* The CREDITORS of CORNWALL of BONHARD.

LORD Bowhill reported the competition betwixt Captain Wightman, arrester, and Cornwall of Bonhard's other Creditors, as donatars to his liferent escheat. Bonhard holding his lands of the Duchess of Hamilton, lying within her regality of Borrowstonness ; and being year and day at the horn ; she gifts it to the Earl of Rutherglen, her son ; and he, on a transaction, assigns it to Colonel Erskin, Pardovan, Torrence, and other creditors of Bonhard's.

Wightman being likewise a creditor, he arrests Bonhard's share in the African company, and pursues a forthcoming against the Commissioners; in which the donatar's assignee compears, and craves to be preferred, the gift of his escheat being prior to his arrestment; but he contended, That the capital stock in the African company, being mortified and heritable, could not fall under escheat; especially now, when eventually, by the treaty of Union, it bears annualrent, and so is no more escheatable than a bond or security bearing annualrent: and, by this rule, a wife might seek the third of it *jure relictæ*; which were very odd.

ANSWERED,—The stock in the African company, being moveable, must certainly fall under escheat; for the Lords have found it both arrestable and confirmable; and, if so, why not escheatable? And the Act 1695, erecting this African company, finds the profits of it affectable by creditors' diligence: Yea, sundry rights, reputed heritable, are notwithstanding escheatable, as rentals, tacks, clauses of relief, though they have profits arising from them: and that the African subscriptions came to bear annualrent, was not by its original constitution, but *ex post facto*, by an article of the Union.

REPLIED,—The stock here, being a dead sum, mortified to perpetuity, can never fall under escheat, seeing it was not of its own nature upliftable, till the company, by paction, was dissolved, and an equivalent given by England for it.

The Lords fell upon a distinction, That, as the profits of that company were moveable, and so escheatable, the annualrents of the stock given by the Union, in place of the profits, must be likewise moveable, and fall under escheat; and, therefore, preferred the donatars of the escheat to the annualrents of Bonhard's capital stock, viz. from 1695 to May 1707; and found Wightman, the arrester, had [not] right to the stock, which did not fall under escheat, but only the annualrents that came in place of the profits by the treaty of Union: and so in a manner divided the controverted subject between them, though not in two precise equal halves, the annualrent being but for twelve years: so that the stock and principal sum was somewhat better.

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1709. January 26. MUIRHEAD and JAMES HILL *against* GEORGE MUIRHEAD.

SIR Robert Grierson of Lagg grants a bond to umquhile George Muirhead, for 7,500 merks, payable to himself, while on life; and, failing him, to Robert, Samuel, and George Muirheads, his sons; and, failing one of them, to the two survivors, equally betwixt them; and, failing of two, to the third surviving; and to Isobel, Jean, and Agnes Muirheads, his daughters, equally amongst them.

Two of the sons die before the father, and then he dies. One of the daughters being married to Mr James Hill, they pursue Lagg for a fourth part of the sum. George Muirhead compeared, and ALLEGED, That, his two brethren being dead, their half of the sum accresces and belongs to him by the substitution: so that there seems to be no more to divide betwixt him and his three sisters, but the other half; which he is content they have their share of. And to interpret the clause, That the whole sum of the bond divides among them, is most incongruous, and inconsistent with the rest of the members of the tailyie, by the conception whereof, he had the third, though both his brethren had lived;

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