

Rossyth's case,) why may not equipollent cases be allowed to infer deathbed, as well as *morbus soticus* or real sickness? Is not the judgment of a man condemned, and in view of eternity, within a few days as much disturbed as any sickness can do?

Some thought the characters of a condemned person, being *servus pænæ et capite minutus*, given them by the Roman law, did not quadrate with the mildness and temper of the civilized nations now. The Lords, to shun deciding this nice point, if one condemned must be reputed on deathbed, ordained them, before answer, to adduce what adminicles they could, to astruct the onerous cause of the bonds quarrelled, and to produce his oath, taken by warrant of the Lords, to see how far the same may be forfeited thereby.

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1709. *December 22.* BOYLE and MONTGOMERY, Tacksmen of the Impost, against ROBERT DOUGLAS.

BOYLE and Montgomery, Tacksmen of the Town of Edinburgh's imposition of two pennies on the pint of all ale brewn within their liberties, pursue Robert Douglas, soap-boiler in Leith, for paying the foresaid duty, for any ale brewn within his tenement there.

ALLEGED,—That his brewing, (though situated locally within the Town of Leith,) was not liable to this imposition, for nothing was made subject thereto but what lay within the liberties of the town and its royalty, either in property or superiority; but his lands of Coatfield fell under none of these denominations, but were mortified lands holden of the Trinity Hospital and the Preceptory of St Antony's Chapel, and so fell not under the Town's gift. And their situation and designment, as lying *infra villam de Leith*, imported nothing; for so does the Yardheads of Leith, and yet are not subject to the Town but to the shire; and so is Caldtoun and the back of the Canongate reputed a part of the town, and yet belong to the Lord Balmerino, and never answer to the Town nor Canon-gate courts: and no more does his lands in which his brewery is built; for which he shows a charter flowing from the administrators of the hospital, as his superiors, and repeats a declarator of exemption and immunity from this servitude.

ANSWERED,—They opponed the Town's gift, comprehending the whole lands lying within the Town of Leith, which infallibly takes in his lands with the rest, and has borne cess and all other public burdens with the rest of the houses there; and seasine given to them is by the bailie sent thither by the Town of Edinburgh; and the clerk of Leith is notary thereto, so it is no special different case from the other houses in Leith. And its holding of the hospital signifies nothing to alter the case; for the Magistrates of Edinburgh are still his superiors. And there are sundry lands within burgh holden of Heriot's Hospital, and others again are Temple lands, holden of my Lord Haddington and Torphichen, and yet pay this two pennies on the pint of ale; so the holding of another superior does not exeme, if they lie within the Town's liberties.

REPLIED,—If the Town of Edinburgh's right to Leith be considered, it will be evident that his lands of Coatfield, (though situated within the Town of Leith,) fall not within their right; for the superiority of Leith being purchased by

Queen Mary from the Logans of Restalrig, she disposed it to the Town of Edinburgh. Now, her Majesty conveyed no more than what the Logans had ; but so it is, this tenement of Coatfield never belonged to the Logans, who came in place of the Leiths of that ilk, but were mortified to the Trinity Hospital, and so quite of a distinct nature from the rest of the buildings in Leith.

DUPLIED,—It is a great mistake to think the Town of Edinburgh has no other right to Leith but the Queen's assignation ; for they had sundry contracts betwixt them and the heritors of Leith, some hundreds of years before Queen Mary's reign. And Durie, at the 12th March 1630, speaks of a servitude granted to the Town over Leith in the year 1398, in King Robert III's time ; and in the late debates betwixt Leith and Edinburgh, about their privileges of trade, many other instances were adduced.

The Lords repelled Mr Douglas's defence, and found him liable to the Town's imposition of two pennies on the pint of ale brewn within the tenement of houses lying in Leith, especially considering the tacksmen had been in possession of it from his tenants these many years bygone ; reserving his declarator against the Town as accords.

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1709. December 29. WILLIAM CARRUTHERS *against* PATRICK CRAWFURD.

ANDREW Crawford, merchant in London, being debtor in considerable sums to sundry persons, flies with his effects to Scotland ; whereupon his creditors apply to the Privy Council, and, without a caption or any other diligence, get a warrant summarily to apprehend him, as a bankrupt stranger, seeking to defraud his creditors, till he should find caution *judicio sisti* ; whereupon, to prevent his imprisonment, he finds Patrick Crawford, merchant in Edinburgh, cautioner for him ; who, after some trial, obtains an absolvitor, and an order to give him his bond of cautionry. The Scots Council being now dissolved, William Carruthers, one of the creditors, raises a reduction of that Council-decreet before the Lords of Session, as contrary to law.

ALLEGED for Patrick Crawford,—That the Privy Council being a supreme coördinate court, the Lords were not competent judges to the reviewing or reducing their decreets, no more than they could meddle or cognosce on the Session-decreets ; for though, in questions dipping on civil rights, the Lords have reviewed Council processes, yet in cases of extraordinary remeids, such as the arresting and attaching of strangers, the Lords never used to interpose, except once in *Street and Jackson's case* against *Mason the bankrupt* ; and therefore none can judge of this attachment and bond of presentation now, but only the Council of Britain, into which the Scots Privy Council is absorbed and incorporated, especially seeing you have neglected to seek redress from the Scots Council, it being several years before their dissolution ; and *l. 43, sect. 1, D. de Verb. Obligat.* says, *Si quis, arbitrato Lucii Titii, restitui sibi stipulatus est, deinde stipulator moram fecerit quo minus arbitretur Titius, promissor quia moram fecit ideo non tenetur* ; and so you having acquiesced in the sentence by so many years' silence, you cannot be heard to quarrel it now.