

tosh, in the north of Scotland, be not expressly reserved in the article of Excise; yet the Barons of Exchequer have never yet determined against them. Nay, farther, as *posteriora derogant prioribus*; the twentieth article must be understood to qualify the preceding general rule in the sixth article.

DUPLIED for the suspenders,—The twentieth article respects only offices concerning civil right in matters of property, and not offices about trade; which are liable to so many vicissitudes and changes, as that the dues thereof are still alterable by supervenient law: yea, even offices of civil right, which savour more of the nature of property, have not only been regulated, but quite taken away by subsequent laws. Were not the profits and powers of the commissariat courts abridged, since the Revolution, for the public benefit; albeit the commissaries and their clerks had their commissions for life? and when the council and some other judicatures were abolished, their clerks and macers lost their offices. It is frivolous to pretend, that cocket-dues are not an imposition upon the subject of trade, but only a servant's fee: for by the same reason it might be pretended, that the dues of collectors, surveyors, and other officers of the customs, do as little concern the subject of trade; and that any such officer, having been in use before the Union, to exact double of what the English establishment allows, might continue so to do, on pretence of a liferent gift in his favours. Again, cocket-dues being universal upon all export, and exacted every where, it is not in the case of local or casual dues, which are only exacted at particular places, on the account of certain conveniences obtaining there, and no where else. 2. Though particular exemptions from paying duties (which is the case of the instances of the city of London, East India Company, Sugary of Glasgow, and aquavitæ brewers in the north,) are excepted in the sixth article; the privilege of exacting more than the ordinary duties is no where excepted. And the duty of prisage in England, if any be, is but accidental and local, as the mark upon the pack or tun here at Edinburgh; and so do not concern the case of cocket-dues, which are universal upon trade.

The Lords found, That the charger's liferent-right to the clerk's office was not taken away by the Union; but sustained the reason of suspension and reduction, that now since the Union, he can claim or exact no more than what was paid in England for the cocket-dues, at the commencement of the Union.

Page 447.

1710. December 29. GEORGE HUME, Younger of Wedderburn, *against* JOSEPH HUME of Ninewells, Advocate.

MR. JOSEPH HUME being obliged, by the reddendo in the charter of great part of his lands holden of George Hume of Wedderburn, to appear at Wedderburn's courts, to be held upon the barony of Hornden, (within which the said lands lie,) or upon any other of Wedderburn's lands within the shire of Berwick; and there to do every thing before Wedderburn and his bailies that he ought in law to do; and to serve him *tempore regiarum proclamationum*, upon Mr. Joseph's own expenses: and Wedderburn having advertised him by a letter, to attend and accom-

pany him to the circuit Court of Justiciary, to be held at Jedburgh, 10th May, 1709, conform to her Majesty's proclamation: upon Mr. Joseph's failure in that piece of duty, Wedderburn caused Alexander Nisbet, his baron-officer, cite him personally at his dwelling-house of Ninewells, to compear the 28th of the said month, at a court to be held by Wedderburn's bailie at Hutton, who decerned him in absence to pay L.50 Scots of fine. Ninewells suspended upon this ground, that he was not lawfully cited, the copy being given to him at his house of Ninewells, which is not within the barony of Hornden: and the baron-officer could execute no summons without the barony.

REPLIED for Wedderburn,—Albeit the suspender was not cited within the barony of Horden, the citation is valid; because he is by his charter obliged to appear at all the charger's courts when required, whether he dwell within the barony or not; which implies, that he may be cited for that effect at any place.

DUPLIED for the suspender,—By attendance at courts, in the charter, personal suit and presence only is meant; and payment of feu-duties is meant by the doing every thing that the vassal ought in law to do: but he is not bound to answer to any action at the superior's instance, unless cited duly within the barony; for *extra territorium, jus dicenti impune non paretur*.

The Lords sustained the reason of suspension, That the baron-officer did execute the libel whereupon the decret charged on proceeded, *extra territorium*; and found the decret to be null.

Page 467.

1711. February 2. PATRICK STRACHAN, Writer in Edinburgh, *against*
The Town of Aberdeen.

IN the action of extinction of an infeftment in the lands and fishing of Rutherstane, granted to the town of Aberdeen, in anno 1672, for security of L2800, at the instance of Mr. Patrick Strachan, who was infest in the year 1674; the Lords found it instructed by documents produced, that the salmon fishing possessed by the town, was under tack for payment of ten barrels of salmon of tack-duty for the year 1679; and, therefore, presumed the rent of the fishing for the following years to be conform to the said tack, and found the town liable to count accordingly, unless they can elide the presumption by a contrary proof and documents: albeit it was alleged for the town, that though the rental of lands (whereof the natural growth and product is more fixed and determined,) is presumed to continue the same: yet in counting for casual rent, as that of a salmon-fishing, a precise rule cannot be laid down, nor so much as a presumptive rule, for subsequent years; but every year's product ought to be positively proved: in respect it was answered for the pursuer, that this pretended difference of casual and fixed rent, as to the manner of counting, hath no manner of foundation: for no rent is so fixed as not to be subject to alteration, and to rising and falling by different seasons and accidents, though some be liable to more hazards than others; and, therefore, the