

1711. *November 9.* SIR ANDREW KENNEDY *against* SIR ALEXANDER CUMING.

SIR ANDREW KENNEDY having applied to the Lords by bill, representing that he had caused duly cite Sir Alexander Cuming, to appear against the third of this instant now past, to answer summarily to the petitioner's claim of expenses, which the House of Peers ordered to be directed and taxed in the session, (*ut supra* July 21st last) and craving that the Lords would proceed therein, and determine according to the instructions he was ready to offer: The Lords found, that Sir Alexander Cuming being a Member of Parliament, was not bound to answer to the petitioner's claim, during the continuance of his privilege of Parliament; notwithstanding the order of the House of Peers.

*Page 538.*

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1711. *December 27.* JAMES REID and JOHN KER, Merchants in Edinburgh, *against* The MAGISTRATES of the said Burgh, and their TACKSMEN of the impost upon Foreign Liquors.

IN the pursuit at the instance of James Reid and John Ker, against the tacksmen of the town of Edinburgh's impost upon foreign liquors, for their unwarrantable seizing a certain quantity of English ale and beer belonging to them, on account of their not paying a penny Sterling of impost on the Scottish pint, imposed on foreign ale and beer in favours of the town, by a gift from the sovereign, anno 1671, ratified in Parliament in the year 1672: the Lords found the town of Edinburgh's right of exacting a duty on English ale and beer, being a private right, is in the same state since the Union as it was before.

Albeit it was ALLEGED for the pursuers,—English ale and beer cannot be called foreign now, since the Union; by the fourth article whereof there is a communication of trade, navigation, and all other rights, privileges, or advantages, that do or may belong to the subjects of either kingdom. So that, as a Scotsman may vend the commodities of Scotland in England, an Englishman may do the like here; and, consequently, may import English ale into Scotland free of duty. For albeit private rights not interfering with the said article be reserved by the treaty, as the right of scavage and portage in London, the two pennies on the pint, and merk upon the pack in Edinburgh, which do equally burden the subjects of either kingdom: if more be exacted upon the pint of English ale imported to Edinburgh, than upon the pint of Scottish imported ale, the absolute equality designed by the treaty is broke. Now that the duty of package and scavage belonging to London is equally exacted from Englishmen, not being burgesses of the city, as from North-Britons, or persons living in Scotland; appears by a certificate from the mayor and aldermen of London, under the seal of their city, dated at Guildhall, May 6, 1712.

In respect it was ANSWERED for the defenders,—Private rights of the subjects of either kingdom remain in the same state after the Union as they were before, con-

form to the eighteenth, twentieth, twenty-fifth articles. Upon which account it was thought necessary to rescind expressly by the sixth article, the duty imposed upon Scottish cattle carried into England, belonging to Sir Christopher Musgrave and the town of Newcastle, who got an equivalent for it from the Parliament: since otherwise that private right would have remained after the treaty as before. So the manufactures of sugar at Glasgow, aquavitæ in the north, and several others, maintain their private rights against exactions of the duties of excise and customs. The city of London has, by their charter, the duty of package and scavage, which is exacted to this day of Scotsmen, since, as before the Union; and so the duty of a merk upon the pack of foreign goods imported to Edinburgh hath been exacted of English goods since the Union, as well as before; conform to the opinion of Sir James Montague, then Attorney-General, which was entered in the records of the treasury. As to the certificate from the mayor and aldermen of London, that is a demonstration that the exemption in favours of the freemen of that city, is not looked upon to be inconsistent with the equality of trade established in England before the Union, or in Britain since; and that Scotsmen have no benefit or ease of the duty of package and scavage by the articles of Union, more than they or any strangers, or Englishmen not being burgesses of London, had before: consequently the duty upon English ale granted to the town of Edinburgh, as a private right, can as little be quarrelled. Albeit Englishmen and English commodities, cannot be reckoned since the Union foreigners, or foreign simply, or with regard to the public state; yet there is no alteration, by uniting the two kingdoms into one, in matters of private right or law; viz. persons residing in England can be cited only upon sixty days, and no advocate can compare for them more than if they were still out of the kingdom, as before the Union. Again, if the fourth article, containing a communication of privileges, intended an absolute equality, it would confound the rights of all incorporations, which is not to be supposed; the equality introduced by the Union being only with respect to the common rights of subjects, as subjects. And here the Scots and English are upon an equal foot; both being liable to the same duty for importing English ale.

*Page 564.*

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1712. *January 4.* WILLIAM WILSON, Merchant in Edinburgh, *against* ELIZABETH, ANNA, and CATHARINE SHORTS, Daughters to the deceased ALEXANDER SHORT in Stirling.

IN the reduction, improbation, and declarator at the instance of William Wilson, as having right by progress to an apprising of a tenement in Stirling, and some adjacent acres, belonging to the deceased Alexander Short, with infetment thereon, for payment of 2300 merks contained in a bond granted by him to the pursuer's author, against Elizabeth, Anna, and Catharine Shorts; for reducing a disposition and infetment of the lands granted by Alexander Short to the de-