merks to Andrew Grant his younger son, and Elizabeth Grant, his daughter, for their provisions; to be divided among them, and paid at such terms as their father should appoint: In implement of this obligation, Robert Grant, in November, 1693, assigned to Andrew and Elizabeth Grants, all that was addebted to him by John Campbell of Friertoun, his father in law; and further, he, and Patrick Grant, his eldest son, obliged them to pay to Elizabeth, 1000 merks; declaring the bond and assignation to be in full satisfaction to Andrew and Elizabeth, of all they could claim through their father's decease, or their eldest brother's contract of marriage. Elizabeth Grant pursued Patrick, her eldest brother's son, as representing his father and grandfather, for payment of the 1000 merks, and the equal half of the other 5000 merks due to her by the above mentioned settlement.

ALLEGED for the defender,—That Robert Grant, the father, had exerced his faculty of division by giving the pursuer 1000 merks in full satisfaction; which effectually excludes her from all further claim.

The Lords found, that there is *jus quæsitum* to the pursuer by the contract of marriage; and that the means assigned by the second bond of provision proving ineffectual, she might repudiate the same, and thereby hath an interest to claim an equal share of the provisions to the children in her brother's contract of marriage. But the Lords thought, that if she did refuse to accept of the father's second deed, she could not claim the additional 1000 merks as a *præcipuum*. The Lords reasoned thus;—the pursuer's right to a share of the 6000 merks was no ways extinguished: because, though the father, by his power of division, might give more or less of the 6000 merks to her brother and her; he was still obliged to give the whole betwixt them. If the father had made no division, the son and daughter would have had right to the 6000 merks equally, and by just proportions: which *jus quæsitum* could never be taken from them, but with their own consent, except upon payment of the whole 6000 merks to one or other, or both.

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1712. *July* 10. The MAGISTRATES of EDINBURGH *against* the COUNTRY BREWERS.

IN the cause at the instance of the town of Edinburgh, against the brewers of the shire (mentioned *supra*, 18th July, 1711.) It was alleged for the town, that they may impose a greater duty upon the sledge, than upon the load, proportionably to the greater quantity of ale brought into the town by the sledge. For this petty custom of eight pennies was imposed upon the load, which was eight gallons; and four pennies upon the burden, which was four gallons: and the load and burden were rated, not because the one was carried on a man's back, and the other on horseback; but because the load consisted of eight gallons, and the burden of four. Whence it follows, that two loads or sixteen gallons now charged upon a sledge, ought to pay double; and so proportionably, according to the greater quantity of ale that shall be imported upon a sledge.

ANSWERED for the brewers,—As the instituting of customs and tolls, are *de summo Imperio*, Sixtinius *de Regal. Lib.* 2. *C.* 6. *N.* 14. *vid. Tit. ff. de Public. et Vectigal. Tit. Cod. nov. Vectig. Instit. non poss.* Craig, *Feud p.* 112. *in fin.*—so the adding or diminishing from, and the reforming or altering tolls or customs established by the sovereign's concession or ancient consuetude, is held to be an innovation and usurpation of the royal prerogative, *d. Tit. Cod. L.* 10. *ff. de Public. et Vectig.* punishable not only by infamy and fining, but even by death: *Minsiger Observ.* 29. *Lib.* 5. *N.* 3. *Farin. Quæst.* 172. *Part* 3. *N.* 67. And the exacting this double duty, for a load of ale of a double quantity or two nine-gallon-trees, is an alteration and augmentation of the custom by the magistrates' authority, which cannot be allowed.

REPLIED for the town,—It is not doubted but that the imposing customs belongs to the sovereign power, and that customs and impositions can only be altered or augmented by the supreme power: But here no custom is demanded, save what is granted by King and Parliament; and there is no material alteration of the impost of custom. This petty custom being given upon the load of eight gallons of ale, or upon the load of ale, as well known to be eight gallons; where two loads, or two nine-gallon-trees, are charged upon a sledge, it is but still the same custom, without alteration or augmentation, to exact sixteen pennies for the same, (as eight pennies formerly for the single load,) save that it is indeed made easier: so that all the brewers, Latin texts, and citations of authors, are only an empty flourish. Neither King nor Parliament ever dreamed that by removing this load to a sledge, or two loads to a sledge, the duty might be frustrated or evaded. Farther, that the quantity rules the matter, and that the King's grant is so to be understood, is evident from this,—that though nothing be determined in the town's charter and gift, with a relation to ale imported to Edinburgh upon carts; yet, because the ordinary draught in a cart is three eight-gallon-trees of ale, two shillings Scots, of duty upon the cart of ale, is established by custom and prescription; keeping always the same proportion that there is betwixt the burden and the horse-load: Although, if people have a mind to cavil, a cart-draught is frequently called a load.

The Lords found, That the town of Edinburgh can impose a greater duty upon the sledge, than upon the load, proportionably to the greater quantity brought into the town by the sledge, than the load; but not exceeding two shillings Scots for the greatest, brought into the town of Edinburgh, for a cart-load.

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1712. *July* 17. ANDREW CLERK, Burgess of Saint Andrew's, and ISOBEL REID, his Spouse, *against* the Creditors of BROADLEES.

IN the competition of the creditors of Broadlees, there was produced for Alexander Clerk and Isobel Reid, his spouse, an heritable bond of provision, with infeftment thereon, granted by Alexander Reid of Broadlees, in favours of his