

Duplied for the defenders ; Their exclusive privilege is no monopoly, being granted by the sovereign conform to law, whereas a monopoly is entered into by private parties without authority ; so both in Scotland and England, certain trading societies and companies enjoy privileges exclusive of all others, which are not reckoned monopolies. Crafts were erected into deaconries and incorporations, for the improvement of their manufactures, and that the members thereof might be the more enabled to pay their proportion of taxes laid on the burgh ; and though a right or thing destined to public use, cannot be acquired *usucapione*, and markets belong to the public policy, yet they differ in their rules and privileges in different places, which may be regulated by long custom. *2do*, There is indeed an equal communication of trade by the union through all the united kingdom ; all the subjects thereof are brought upon an equal foot ; that is, an Englishman may import into a royal burgh in Scotland, whatever a Scotsman could import, but that doth not derogate to the privileges of royal burghs, and incorporations ; so that where the Scots are under a restraint by the special regulation of a market, introduced by prescription, the English cannot plead immunity from it. Thus the grant of two pencies upon the pint of ale in favours of the Town of Edinburgh, lyeth equally upon all the lieges Scots and English, notwithstanding the union ; whereas the twelve pence imposed in favours of the good town, upon the pint of ale or beer imported from abroad, doth not now since the union affect English ale or beer, though it did before.

No 160.

THE LORDS repelled the defence founded upon prescription, and sustained the declarator.

Fol. Dic. v. 2. p. 111. Forbes, p. 474.

1713. July 9. DUKE OF MONTROSE *against* M'AULAY.

No 161.

AN heritable bailie of an Earldom, having, under the colour of that title, acted also, for above forty years, as heritable bailie of a regality, which also belonged to the Earl, his constituent ; this possession, as wanting a title, was not found to make a prescription as to the bailiary of regality, even in the person of a singular successor, who purchased the office of bailie of the Earldom.

Fol. Dic. v. 2. p. 111.

* * * This case is No 21. p. 2266, *voce* CLAUSE.

1714. February 5.
Brigadier PRESTOUN, and the other CREDITORS of Valleyfield, *against* Colonel JOHN ERSKINE of Carnock.

No 162.

IN the mutual declarators of property and servitude betwixt Brigadier Prestoun and the other Creditors of Valleyfield, and Colonel Erskine, it being

A person having been in the immemorial pos-