

1786. *June 30.* JAMES SWAN in Lochlyoch *against* JAMES SWAN in Boghead and OTHERS.

BILL OF EXCHANGE—OATH OF PARTY.

Oath of Party, respecting the onerosity of a Bill, must be special.

[*Faculty Collection, IX. 441 ; Dictionary, 9418.*]

ESK GROVE. Samuel Swan ought to have explained what value he gave : his refusal was highly improper.

MONBODDO. His refusal affords suspicion that he could not prove value given.

PRESIDENT. It is strange law, that a person is not bound to swear what the value was, and that he may screen himself under a general answer.

JUSTICE-CLERK. The party, by advice of his procurator in the country, refused to answer. But then, when he came to town, he ought to have offered to answer all questions : had he made such an offer, and then died in the interval before swearing, I should have presumed that value had been given ; but I cannot presume so in this case, for Samuel Swan, even when in this Court, still refused to swear as to particulars.

On the 30th June 1786, “ In respect that Samuel Swan refused to answer the interrogatories put to him by the Commissioner, and persisted in that refusal before the Ordinary, the Lords found that the onerosity of the indorsation to the bill in question, in favour of Samuel Swan, is not sufficiently instructed :” and, on the 18th July 1786, “ adhered ;” altering the interlocutor of Lord Stonefield.

*Act. W. Honeyman. Alt. H. Erskine.*

1786. *July 20.* CHRISTIAN JEAN SUTHERLAND *against* JEAN SUTHERLAND.

HEIR APPARENT.

Inhibition used against an intermediate Apparent Heir, of no effect after the succession is taken up by a subsequent heir serving to the predecessor last infert.

[*Fac. Coll. IX. 449 ; Dict. 5294.*]

BRAXFIELD. Andrew Sutherland, being never more than an apparent heir, was never possessed of a subject capable of being affected by inhibition. The one arrestment could not affect a subject which did not belong to Andrew Sutherland : the other arrestment in the hands of the consignee is good.

On the 20th July 1786, "The Lords preferred Jean Sutherland *primo loco* for her provision of liferent, according to her contract of marriage and infestment produced;" adhering to the interlocutor of Lord Ellick.

For G. Sutherland, Al. Elphinston. *Alt. C. Craigie.*

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1786. July 21. ALEXANDER DUNCAN and OTHERS *against* The MAGISTRATES and TOWN COUNCIL of ABERDEEN.

BOROUGH ROYAL.

Powers of the Magistrates in increasing the dues paid by persons becoming Burgesses.

[*Faculty Collection, IX. 443 ; Dict. 2002.*]

JUSTICE-CLERK. None of the grants make any mention of the *quantum* of the sums to be exacted from intrants. The question is, In what manner must this *quantum* be regulated? The fines or entries must be different in various boroughs, according to the benefit arising from the being entered. The Magistrates and Town-council may heighten or lower them, as there is no *quantum* fixed by the Sovereign. The Magistrates must have the power of fixing it in the first instance. At the same time, I do not mean that Magistrates may abuse their power by demanding too high entries to the exclusion of the king's lieges. There is no appearance here of any exorbitant imposition.

MONBODDO. Here there is no tax imposed: I should doubt of the power of Magistrates to impose a tax, even with consent of the burgesses, though that was found in the decision 1678. The dues have been varied from time to time: they were diminished in 1699. It is reasonable to increase them now.

HAILES. It is fashionable to seek for grievances: here, however, none can be found. In 1699, the nation was exhausted by the Darien expedition and a succession of years of scarcity. It had neither money nor credit. The Magistrates and Town-council of Aberdeen very properly lowered the *quantum* of entry-money: now that things wear a very different appearance, they, With equal propriety, return to the more ancient practice, but still with moderation and on cause shown. I see not any *new* exaction.

ROCKVILLE. There is no dispute as to the right: the only question is as to the *quantum*.

ESK GROVE. There is some proof of increase of entrant dues in other boroughs; but, what is more material, there is proof of such practice in this borough. I would not willingly increase the power of Magistrates beyond use and wont. There is a series of Acts to the purpose I am mentioning in the last century. L. 25 exacted in 1641, is double or treble of L. 25 in 1779. [This was said something at random.] The need that there is of an ample revenue is no reason for laying on any extraordinary burdens. But the value of the freedom of Aberdeen is greatly increased by the new harbour, and, consequently, the price of the purchase of that freedom ought to be increased.