

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.

BRAXFIELD. The power of admitting burgesses is in the Magistrates. Fines have always been exacted: as Magistrates have the power of fixing them, they have that of altering them according to circumstances.

On the 21st July 1786, "The Lords repelled the reasons of reduction," (unanimously.)

*Act.* R. Dundas. *Alt.* Ch. Hay.  
Memorials Inner-house.

1786. August 20. WILLIAM SIMPSON *against* JAMES HENDERSON and OTHERS.

SALE.

What delivery requisite to transfer the property.

[*Faculty Collection, IX. 446; Dictionary, 14,204.*]

BRAXFIELD. This cause must be determined on the contract, and not on general principles. There was an appropriation of the ship at different periods.

ELLOCK. There is neither justice nor common sense in the plea of the creditors. They desire to take the benefit of the contract without implementing it.

HENDERLAND. It should seem that the property was not transferred.

PRESIDENT. I puzzled myself as to questions of *renditio, periculum, &c.* But, at length, I came to an opinion. Here there is a fair contract: the creditors must implement it, and so must the shipmaster.

MONBODDO. What is determined here, must be the rule in every case. Where a person employs another to perform any work for him, the property is in the employer. I should conceive that to be the case, although no money had been advanced.

On the 2d August 1786, "The Lords found that Simpson is entitled to the property of the ship, he accounting to the creditors in terms of the original contract."

*Act.* W. Tait. *Alt.* Al. Wight.

*Reporter,* Monboddo.

*Diss.* Stonefield. *Non liquet,* Henderland.