

though by the canon law no prescription can run *in decimis garbalibus*, yet *decimæ minores* may be prescribed.

The Lords found this allegiance relevant.

*Act.* Birny.

*Alt.* Cunyghame and Stewart.

*Advocates' MS. No. 96, folio 84.*

1670. *July 9, and 27.* The MAGISTRATES of Montrose *against* SCOTS.

*July 9.*—The magistrates having bysworn stent masters stented the whole town, and amongst other inhabitants thereof, having stented thir defenders, conform to their estate and the quality of their trade; and having charged them to pay their proportions, they suspend upon this reason, that there was a prior stent imposed upon the citizens of that burgh, and upon them amongst the rest, for this same very ground and cause for which this stent is again laid on; which first stent was accordingly levied and paid; and this they offered to prove by the stent rolls, and the treasurers their receipts of that stent. This was found relevant. A second reason was the inequality or partiality used in imposing the stent, in so far as thir suspenders are stented three times higher then they were four years ago.

ANSWERED,—*Non relevat* to infer any inequality, seeing the increase of their trade has given occasion to that, which trade is a thing uncertain, sometimes better, and sometimes worse. And where they REPLIED, that trade was universally now decayed and turned worse in the kingdom; it was DUPLIED, that *in toto jure generi derogatur per speciem*, and whatever general decay there may be of trade there or elsewhere, yet they offer them to prove, that their trade is far greater now than it was then, when they were stented at less. But *2do*, it ought not to be permitted to burghers, for a small inequality, to quarrel the stent imposed by sworn men, else all the magistrates of our royal burghs might be sore troubled, and the taxation should come but slowly in.

*Charger,* Lockhart.

*Alt.* Sinclair and Bailie.

*Advocates' MS. No. 70, folio 81.*

*July 27.*—In this cause, mentioned before, *9th of July 1670*, they having alleged on a former stent, and it being admitted to their probation this day, the term being craved to be circumduced against them, they produced a diligence against the keepers of the town books for proving it, and craved a farther diligence. ALLEGED, They could have no farther diligence, because they being in a suspension, could have no more terms for proving their reason save one. REPLIED, Ought to be repelled, because, *Imo*, it is but a charge on general letters; *2do*, offers to prove the chargers hindered the stent-masters from producing their books, and so it is through their own default that their reason is not proven.

The Lords granted a farther diligence. *Partibus ut supra.*

*Advocates' MS. No. 97, folio 85.*