

1671. *January 13.* TOD and JOHNSTON *against* my LORD DRUMLANRICK.

MY Lord having ejected thir persons by virtue of a decret of removing, they intent reduction of that decret upon this reason, that my Lord had no right to these lands standing in his person, but the naked superiority. Answered,—He had got an resignation *ad perpetuam remanentiam* from the last vassal of these lands, and so the property and superiority were confounded, and both concentrated in his person.

REPLIED,—This resignation cannot be respected, because, before it, the pursuers having charged Drumlanrick superior to enter them to the lands, as having right thereto by disposition, precepts were direct out of the chancellery, upon his disobedience, to the Sheriff for infesting them, and they were accordingly infest before the resignation.

DUPLIED,—The precepts and the seasine are null, in respect the charge given to my Lord was suspended before the seasine was given.

TRIPLIED,—Ought to be repelled, because the suspension was antedated, and though it bears date four days before by seasine, yet Walter Riddell and Hew Wallace the writer of it, being examined thereupon, they have both acknowledged that the bill was not so much as presented while after the date of the seasine.

Their dispositions were ordained to be advised.

*Advocates' MS. No. 105, folio 85.*

1670, and 1671. MAGNUS MOWAT *against* The TOWN of LITHGOW.

1670. *July 22.*—This was a spulyie which they restricted to vitious intromission; against which, alleged *absolvitor*, because any intromission the town had with the goods libelled, was by authority of an act of Parliament, *Ja. 6, Parl. 12, Cap. 152*: authorizing and empowering all burghs Royal, to search, apprehend, take, and intromit with the goods and geir of unfreemen traffickers within the bounds of their respective jurisdictions, and to apply the one half to their own use, and the other to the king's; for this pursuer being an unfreeman, yet keeping a common trade of staple commodities betwixt Holland and Borrowstouness, (which lies within Lithgow's territories,) they apprehended some soap pertaining to him; and so what they did, being done *optimo jure* they can never be liable therefore.

ANSWERED,—*Imo*, Where he is called an unfreeman, offers to prove he was a freeman in Kirkcaldie, Dundee, and sundry other free burghs, and so had power to trade in staple commodities. *2do*, Where the town of Borrowstouness is said to be within the defenders' territories, the contrary is notour, it being a free regality erected to Duke Hamilton. *3tio*, The defence is not conceived in the terms of the act of Parliament whereon it is founded; for it requires that the goods

which they are empowered to seize upon, be exposed to sale by unfreemen, which was not done by the pursuer, but were only imported there *ad exonerandum*, and to be sold in bulk to free men.

REPLIED,—The first *non relevat*, unless he say a freeman in Lithgow; else he had no right to sell or import staple wares within their bounds; and oppones the act of Parliament. To the *third*, oppones also the act upon which their defence is *in terminis* conceived and subsumed; and if it were otherwise, the burghs royal were in a very hard case.

They were to have the Lords' answer on it.

The Lords issued forth a commission to merchants, especially in the town of Edinburgh, to try what was the particular custom in such cases, where a man was burghess of one town, and offered to sell in gross to another burgh, if he was free to do the same or not, and if it fell under confiscation as free goods.

*Act. Birnie.*

*Alt. Wallace.*

*Advocates' MS. No. 92, folio 84.*

July 29.—In this cause noted at *No. 92*, the dispute having gone to interlocutor, the Lords repelled the defenders their allegiance and duply, in respect of the pursuer his libel and reply; and therefore admitted the summons to his probation.

*Advocates' MS. No. 100, folio 85.*

1671. *January 13.*—The interlocutor we have at *No. 100*, being stopt, was this day heard again.

It was ALLEGED for the pursuer,—That his being freeman in Kirkaldie, made him free to import staple commodities to any place in Scotland, though he were not a burghess in that place, and therefore Lithgow did wrong in meddling with his soap.

To this it was ANSWERED,—That the same was altogether false; for as every burgh had their own particular jurisdiction, and had power therein to punish and fine delinquents and unfreemen; and as the magistrates of another burgh royal, cannot exact or uplift the fines imposed by the magistrates of any other burgh than their own; so the privilege of merchants in one burgh cannot *in communi* be extended to all other royal burghs in Scotland.

*2do*, It being ALLEGED that the town could never meddle therewith, because ye had not yet broke bulk thereon, nor exposed it to sale; ANSWERED,—We offer us to prove he had sold some of it ere we seized on it. *Partibus ut supra.\**

*Advocates' MS. No. 106, folio 86.*

\* *Hope, folio 15*, at the title about Burrow's privileges, tells of a charter given by King David to the Burrows, prohibiting them to buy or sell within one another's liberties; and so the being free in one, makes him not free in another, yet see *Leges Burgorum, capite 139. Vide infra, December 1676, town of Glasgow against Greenock, No. 615.*