

and the law as effeirs. *Item*, in all the revocations of our King's regalities, are always one thing: *vide* act 51 in 1493, and all the rest of the revocations; *vide* act 46, in *March* 1649. Again in the 277th act, granting a taxation to King James of 200,000 merks in 1597, the regalities are stigmatised as defrauding his Majesty of the taxation due to be paid by the inhabitants of the said regalities, who being put to the horn commonly obtain simulate dispositions of the same from the lord of the regality, having right to their said escheat, to the intolerable prejudice of his majesty's collector. Your Lordships know better than I, that the free princes of Germany at the beginning got their lands erected to them by the Emperors, with some such like privileges as those of our regalities are; which princes now have wrested sundry of the most important and most incommunicable badges of royalty and sovereignty from him, and come to that pass, they pay him little or no recognizance, if any. Are not the lords of the regalities to this day contending with his majesty, (so that it is not much to be wondered to see them unjustly vex the royal burghs,) which of them shall have the casualties of bastardrie, and last heir of those who die within their resort. And though their vast and boundless appetite is to be suspected, yet I must beg pardon to say, that if all the regalities in Scotland were founded in as much merit and incomparable deservings as that which your Grace has got erected, either their disconformity to that standard would make them fewer, and so ease the country of them, or their conformity would allay much of that grudge and prejudice the lieges have against them.

In respect of all which, &c.

The Lords the time of this debate, forced the royal burghs to declare that it shall be leasum and lawful to gentlemen and all others, whether free or unfree, to export and send abroad their corns, cows, linen cloth, plaiding, or other product and manufactory of the country, without owning the burghs; or at their pleasure to sell them to unfreemen within the kingdom, who shall have likewise power to export them: providing always the gentlemen, their servants, or the unfreemen to whom they sold their commodities and who export them, bring home, and import nothing therefore, but either money, or else so many foreign commodities as shall be needful for their own use.

This was the more easily condescended to, because the import (which is three times more considerable than the export,) being secured, the prejudice and hazard was the less, seeing all export is *intuitu* of the import. Next, the unfreemen get no more by this concession, than what by the very acts introduced in favours of the royal burghs is reserved to them. See act 11 in 1466; and the 152d act in 1592. As this question was unhappily started at a wrong time by the burghs royal, so it gave rise and opportunity to the act of Parliament in 1672, voiding the case against them.

*Advocates' MS. No. 353, folio 138.*

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1672. *June 25.* NASMYTH and FORREST *against* ALEXANDER HAMILTON of Dalzell.

THEIR two persons convening the laird of Dalzell as heir to his father, for making payment to them of L.32 which they paid for his father in 1653, when they

were tenants of the lands of Allantonhauch, the same being exacted from them for the cess due forth of these lands: it was ALLEGED, That the defender was noways liable in that debt, because he had an elder brother, viz. Robert Hamilton of Monkland, who was heir general or heir of line to his father, and so behoved both to be convened and discussed before any heir of conquest, provision, or of the second marriage, such as this defender is.

To which it was REPLIED,—That though *regulariter*, the heir of line must be first discussed, yet there was no necessity of using that order of discussing here, because this defender succeeding as heir to the very lands wherefore this cess was paid, and upon account whereof this debt was contracted, and it being exacted then from the tenants as *debitum fundi*, it were but just they should have the same privilege in the repetition whereof, and be put to know none save the possessor of the land, especially he succeeding thereto as heir.

My Lord Craigie refused to sustain process against this defender, till the heir of line were first discussed, notwithstanding of all the specialities in the case; and called to mind, that in an action betwixt the Duke of Lennox and his sister, the Lords ordained the heir of line to be first discussed: albeit it was alleged, that the debt acclaimed was contracted upon the account of those lands to which the heir of provision (whom they were insisting against) had succeeded.

*Advocates' MS. No. 354, folio 146.*

1672. *June 26.* Anent WITNESSES' EXPENSES.

The Lords have laid down a certain rule for witnesses' expenses in all time coming, whether they be adduced in causes civil or criminal; viz. they have modified to each footman two groats *per diem*; and to every horseman four groats.

See in January 1679, in George Young's case. *Sneidivin, ad parag. 24 and 25, Institut. de actionibus, pag. 1426.*

*Carolus quintus, Imperator*, appoints *octo cruciferos* for a witness's expense *per diem*.

*Advocates' MS. No. 355, folio 146.*

1672. *July 2.* Anent REDUCTION EX CAPITE INHIBITIONIS.

*Queritur*, if a man who pursues to have deeds reduced, *ex capite Inhibitionis*, or such like, be obliged to call in his process the granter of the said deeds, sought to be reduced, and he being dead, his representatives: seeing if the deeds be annulled, the granter stands bound in warrandice, and so is concerned that they be not reduced; and also he may be able to say many things against that creditor who pursues the reduction, that may be noways consistent in the defender's knowledge.

I think it safest the author be called, just as the principal debtor must be called