

1677. February 22.

ROBERT DICK *against* The TOWN of EDINBURGH and JOHN LAW Goldsmith.

No 97.
The privilege
of arresting
strangers
being confin-
ed to *furnish-*
ings of mer-
chants, the
price of a
quantity of
victual, be-
longing to a
burgess, and
sold by him
to a stranger,
was found
not to fall
under the
privilege.

ROBERT DICK having bought a bargain of victual from John Law goldsmith, for which he had given no bond, he finding him in the town of Edinburgh, desired one of the bailies to arrest him until he should find caution; which he having done, there was a bill given in to the Lords, at the said Robert's instance, craving that his cautioner might be declared free, and all new arrestments discharged, to be executed by the bailies, conform to the 8th act of the 3d session of the Parliament 1672, whereby all magistrates of royal burghs were discharged to force any who live without burgh to find caution for any debt except horse meat, man's meat, abuilziements, or other merchandize due by the stranger; whereas John Law was not a merchant, but a goldsmith, and the victual sold did belong to him as executor to his father, he never having traded as a victual merchant.—It was *answered* for the Town and John Law, That the late act of Parliament, whereupon the complaint was founded, being but a correctory law, and made for taking off the power of burghs royal, who had power to arrest strangers for any debts, albeit they had their bonds and subscribed writs, yet that act ought not to be extended to this case, where John Law had no writ for his debt; and he not only being a goldsmith, but a guild-brother, is as fully capable of all merchandise as any burgess whatsoever; and the selling of victual being most ordinarily within burgh, ought to be included under merchandise; and there is no difference whether the same did belong to him *proprio jure*, as executor to his father, or if he had bought the same; being burgess or goldsmith, succeeding to jewels, plate, or other moveables, which were not fit for him to retain for his own use, he may sell the same as merchandise, and force the buyers to find caution.—THE LORDS did sustain the complaint, and declared the cautioner free, and that no order should be of new given by the bailies, finding that this case did not fall within the act of Parliament; and the exception of merchandise, which was only made for the entertaining of trade and policy, in favours of burgesses who had their livelihood thereby, who having no writ or bond, might be allowed to arrest strangers; or otherwise, by tedious process and expences, all trade might be interrupted; whereas, such a bargain as this was never made before by the goldsmith, or any like since; and so he might and ought have taken a bond for the price.

Fol. Dic. v. I. p. 119. Gosford, MS. No 970. p. 653.

No 98.
The magis-
trates of a
burgh con-

1679. November 14. The MAGISTRATES of KIRKALDY *against* DOUGAL.

THE Magistrates of Kirkaldy having convened John Dougal before the council of the burgh for reproachful speeches against the magistrates, and fined him