

1677 and 1679. The SKINNERS of EDINBURGH *against* The FLESHERS of the CANONGATE.

1677. *November 22.*—THE TOWN of Edinburgh and their Skinners, both by an Act of the Convention of Burghs, and an Act of the Town-Council of Edinburgh, having the inspection of the hides and skins brought to the markets by the fleshers, to see if they be cut or abused in the flaying, and rendered insufficient,—it being a staple commodity carried abroad,—and been empowered and in use to fine, where, upon visitation, they found them faulty and insufficient: and having fined some of the fleshers of the Canongate upon this head, they presented a bill of suspension, founded on their seal of cause, from the Baron of Broughton, in 1612, erecting the fleshers in a corporation, and so could not be visited by strangers. See the debate in the Informations. Which being reported to the Lords by Reidford, they found their seal of cause, from the Baron of Brughton, gave the defenders express power to impose, exact, and levy; and that it was anterior to the Town of Edinburgh's right to the regality of the Canogate; yet that the baron-bailie, put in by the Town of Edinburgh, came in place of the lord of the regality, and was not so denuded and secluded thereby but that they might also fine for insufficient skins, the jurisdictions being cumulative.

Then the Fleshers of the Canongate offered to prove they were in immemorial possession of fining, conform to their gilt and seal of cause. And the Town of Edinburgh, and the Skinners and Cordiners of Edinburgh, their visitors, proponed upon interruptions, and their use likewise of fining in the Canongate. Both which were admitted. See Act 85, Parliament 19, Queen Mary, in 1563; anent bringing Skin and Birne to the Market. Birne is the burnt mark.

The words of the interlocutor be these:—The Lords having considered the seal of cause produced, they find the Fleshers of the Canogate are incorporated in a free trade; and have the privilege of their said seal of cause, and may apply the fines arising by their own acts, to their own poor, conform to the said seal of cause. And find, that the baron-bailie of the Canongate can only judge of transgressions of the Act for visiting skins and hides; but may appoint visitors to visit the skins of beasts, either killed by the Fleshers of the Canongate or brought to the markets thereof, and to report. And find the fines imposed by the baron-bailie, for transgressions of the said acts, are not applicable to the poor's box of the fleshers of the Canongate.

Advocates' MS. No. 660, folio 308.

1679. *January 10.*—The cause of the Skinners of Edinburgh against the Fleshers of the Canongate, being again reported to the Lords;—they adhered to their former interlocutor; and find, that the Town of Edinburgh has the nomination of the visitors of the skins, and will not limit them therein; but recommend to the magistrates to choose honest and fit persons. As also, for the second point, find the Incorporation of the Fleshers of the Canongate, by their seal of cause from the Barons of Broughton, in 1610, has not the right of thir fines; but give them to the baron-bailie, as they had done before.

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ANENT GESTIO PRO HÆREDE.

ONE, as heir to his goodsire, passing by his father, is pursuing for a debt ow-

ing to his goodsire. The defence against the debt is, that it was prescribed, and past forty years. He ANSWERS,—Interrupted by his father's minority. *Quær.* if this will be a behaviour as heir to his father, since, by making use of his father's minority, *reportat commodum*, and he reaches the sum contained in this bond; which otherways would be found prescribed. The eminent lawyers differed in their opinions upon this question. *Vide infra*, a similar case, stated at the end of *February* 1680, *No. 5.* *Vol. I. Page 32.*

1679. *January 11.* The EARL of HOME *against* The LAIRD of KYMMERGHAM and the LADY AYTON, his Spouse.

THE Earl of Home, as donatar, (*vide* 6th Dec. 1677,) pursues the Laird of Kymmergham and the Lady Ayton, his spouse; that he, as his Majesty's donatar, had right to Kymmergham's *jus mariti* of the barony of Ayton, in respect of his clandestine marriage, and the certification of the 9th Act Parliament 1672.

It was fully debated, but not decided. Sir G. Lockhart, and many other lawyers, thought the *jus mariti* was not *caducum*, nor at the King's disposal. For the said Act 1672 doth not bear that the marital right shall be confiscated. But, say they, the *jus mariti* is *nullius*, not being the husband's, and so *inter ἀδικοροα*, falls to the crown. *Nulla modo*; for it remains with the wife and her heirs; and, if it be the *jus relictæ*, with the husband and his heirs. And it may be exemplified in this case; where an inheritance devolves, *stante matrimonio*, to the wife, by succession or disposition, then the husband would not here get the *jus mariti* of it.

There was much debated from the canon law, anent the clandestinity of a marriage, being by one that had not the character, or in another nation, or incapacitated only *jure positivo municipali*. But, in the Roman church, matrimony is a sacrament. *Vol. I. Page 32.*

ANENT BILLS of SUSPENSION.

AN Act of Sederunt was made, That where there is a bill of suspension once presented, if the suspender compear not thereafter, yet the former charge shall not be put to execution, till an instrument be taken against the presenter of the bill of suspension, to put him *in mala fide*. *Vol. I. Page 32.*

ANENT ESCHEAT.

QUÆR. if a man's curiality falls under a single escheat. It seems not; because the courtesy seems equivalent to a liferent tack, which, by the Act 1617, is only carried by a liferent escheat. *Vol. I. Page 33.*

1679. *January 11.* SLIT *against* DOUGLAS.

THE case between Slit and Douglas being reported,—the Lords annulled