

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

in 50 dollars, and incarcerated him, and declared his burghs-ticket void till he had petitioned the council; he gave in a bill of suspension, and the cause being ordained to be discussed thereon, he *alleged* the decret was null, being pronounced by the town council, who have no jurisdiction; and that the fine was unjust and exorbitant, he having only said *that he got crooked justice, and would seek reparation from the Lords*, and referred the decret complained upon to the Lords, that it was unjust.—It was *answered*, That all the magistrates being defamed, and complaining as parties, it was more equal and modest for them to remove, and not to sit as judges in their own complaint, but leave it to the town council; and that the sentence was noways exorbitant, but necessary for the defence of authority, and the respect of magistrates, without which they would become contemptible, and unable to serve the King in their stations; nor was it relevant to allege that the sentence was unjust, that therefore they might be defamed by most opprobrious words in presence of a multitude of citizens at a like-wake, which is proven by the testimonies of witnesses produced; likeas John Dougal had homologated the decret, by craving the magistrates pardon upon his knees, conform thereto.

Yet the LORDS found the decret null, the town council having no jurisdiction; but sustained it as a libel, and allowed John Dougal to propone his defences; and he proponing none, but both parties referring to the probation, the LORDS did instantly advise the same, and found, that John Dougal had, at a like-wake in the town, reproached the magistrates as unjust judges, and called them bankrupt rascals, and other more opprobrious words, which were not particularly expressed, and seeing he had acknowledged his fault upon his knees, and was put in prison, they modified his fine to 15 dollars, and assoilzied him from the rest of the points.

Stair, v. 2. p. 706.

1735. July 1.

JUSTICES of the PEACE of WIGTOUNSHIRE *against* The MAGISTRATES of the BURGH of WIGTOUN.

JUSTICES of Peace have right to call for the use of town-houses of royal burghs, and head burghs of shires, and the Magistrates of such burghs, are obliged to make patent their town-house to the Justices at all times for their meetings.

Fol. Dic. v. 1. p. 119.

* * * See This case *voce* JURISDICTION.

No 98.
vened a man before the council of the burgh, for using reproachful language to themselves. They were found not to have jurisdiction; but the Court of Session fined the party.

No 99.