

office, to umquhile James Weems and his son James Weems conjunctly, and to the longest liver.

It was ALLEGED for Cockburn, That the cocket-office, being a known fixed office, was only communicable by the King's gift under his own hand; and the commissioners of Exchequer have no power to gift the same.

It was ANSWERED, That though the commissioners of Exchequer had no special power to gift offices, yet they have a general power to manage the King's revenue, and consequently to do all things necessary for that effect: which extends to the cocket-office; seeing by the cocket the loading is known, and thereby the custom of the export.

It was REPLIED, That though the Exchequer may give commissions, in so far as is necessary for administration of their own commission, yet that can extend to no fixed office; which the King himself can only gift: for, though the Lords of Session have the power of administration of justice, which necessarily requires clerks and macers, yet they cannot gift the place of a macer, neither can the council name their macers. So that the giving of cockets not being an ambulatory commission, but a settled office at the King's gift, the Exchequer cannot gift it, unless they had special warrant, much less can they gift this office with a conjunction or substitution. *2do.* Weems is inhabile, as being at the horn.

It was DUPLIED, That being at the horn doth not incapacitate to exercise such an office; and Weems hath assigned it to the Lord Burntisland; and may exercise the same by a depute.

The Lords found, That Weems's gift not bearing a deputation, he could not make a depute. And having called for the commission of Exchequer, they found that this gift was not warranted thereby; and therefore preferred Cockburn upon the King's gift, unless Weems will prove, that, by long custom, the Exchequer hath been in use to give such gifts of the cocket-office as this formerly to others.

*Vol. II, Page 857.*

1681. *February 9.* CUNNINGHAM *against* His CREDITORS.

THE Lords having appointed the keeper of the minute-book to uplift and pay the macer's dues,—several creditors of Adam Cunningham, one of the macers, arrested the same in his hands, and pursued to make forthcoming.

It was ALLEGED for the macer, That these dues being his fees for his service, they were alimentary, and necessary to him to exercise his office; and they being paid in smalls, the keeper of the minute-book could not positively depone what was in his hand, at every arrestment.

It was ANSWERED, That the macer's place being lucrative more nor necessary for his aliment and service, his creditors could not be excluded upon that pretence; and there is no reason that a macer, bruiking office by the King's gift, subservient to the distribution of law and justice, should not be law-biding.

The Lords found the macer's dues arrestable; and appointed the keeper of the minute-book to count therefor yearly, the first day of January, the first

day after Martinmas, and at the first of August : and that the arresters should be preferred according to their priority as to every running term, and not as to every particular due, as it was paid to the keeper, but for the whole term.

*Vol. II, Page 858.*

1681. *February 17.* The TOWN of BRICHEN *against* ARBUTHNET.

THE TOWN of Brichen having obtained a gift, from King James, of the chaplainries belonging to the cathedral kirk of Brichen, for the use of their hospitals ; they did pursue reduction and declarator of their right to the chaplainry of Cadhame, and to the mill-lands of Cadhame, belonging to Findoury, as a part of that chaplainry, and against the Earl of Southesk, as pretending right to the said chaplainry ; in which summons there was also improbation. Whereupon they obtained certification, which was extracted ; and the cause now being discussed, “The Lords declared, that the pursuers had right to the chaplainries of Cadhame, and to the feu-duties of the mill-lands of Cadhame.

Whereupon Findoury ALLEGED, That it ought to be declared, That the certification should not be prejudicial to his right of property, but that he should be reponed against the same :—*1mo.* Because certifications in improbations contained in the same process with reductions and declarators, are always dependent till the reductions be discussed or passed from ; and therefore the Lords used to repone against certifications extracted, while the principal process is insisted in, and the plea not ended. *2do.* Certifications in improbationns joined with reductions or declarators, do not simply improve the writs called for, but only in order to the conclusion of reduction of these declarators ; and therefore though certification be extracted, it hinders not to make use of the same writs as to all other effects. So that the conclusion of this declarator being, by the Lords’ decret, determined to declare the town’s right to the feu-duty to the mill-lands of Cadhame, the certification cannot be made use of against Findoury’s property, who now produces a progress of 100 years to the property ; neither can the King’s gift make the town superior, but only give them the right to the feu-duties, the King remaining superior by the Act of Annexation ; and the Town can be in no better case than the lords of erection.

It was ANSWERED for Brichen, That certifications in improbation being the great security of the lieges to free them from the pretence of other rights, have been ever adhered to, though in absence ; much more where this defender appeared, and the certification was extracted several years ago. Nor is it competent now to debate the pursuer’s title, nor to question the certification extracted summarily, any ways but by reduction.

The Lords declared, That the certification should not prejudge Findoury of the right of property : in respect of his progress produced, against which nothing is objected ; and that the decret of the Lords hath only declared the right of the feu-duty to belong to the town.

*Vol. II, Page 861.*