

DUPLIED for the Defender,—Although the term of payment of the first moiety be come, it remains suspended till the condition exist, which is adjected to the obligation itself; and the daughter's marriage, or majority, was only made the term of payment, that annualrent might be due from that time, if the condition shall thereafter be purified. At least, the defender cannot be obliged to pay the first 4000 merks presently, unless the pursuers find caution to restore the same in case they succeed to Dirletoun's money.

The Lords found the 4000 merks due to Margaret Hay, with annualrent thereof since her marriage; and decerned the defender to make payment thereof at the term of Martinmas next, upon the pursuer's finding caution to restore it in case she succeed to Dirletoun's money.

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1710. *July 27.* [ANENT BILLS for GRATIS WARRANTS.]

THE Lords ordered the names of the advocates and writers for the poor to be inserted in all remits to them upon bills for *gratis* warrants. *Page 437.*

1710. *Dec. 13.* SIR WILLIAM CRAIGIE of Gairsey *against* Sir ALEXANDER DOUGLASS of Egleshaw, and other Freeholders of Orkney.

SIR WILLIAM CRAIGIE pursued Sir Alexander Douglass, and other freeholders of Orkney, to make payment of L9600 Scots, due to him for his fees as commissioner for the stewartry of Orkney to the several Parliaments betwixt the years 1681, and 1702, mentioned in a certificate of his attendance, under the hand of one of the clerks of Parliament.

ALLEGED for the Defenders,—All the inhabitants of the isles of Orkney and Zetland, erected by the Act of Parliament, 1669, into one stewartry, being liable for their proportions of the pursuer's fees, and none of the heritors of Zetland being cited; no process can be sustained against the defenders, till all parties having interest be in the field, that it may be known what every one's proportion is.

REPLIED for the Pursuer,—He was not bound to cite any heritors of Zetland, seeing none of these signed his commission, and he could not know that they had any interest in electing a Commissioner for Orkney: but the defenders must cite them, instruct their capacity to vote in such elections, and their being liable to commissioner-fees, and produce their valuations, before they can pretend to any proportionable deduction upon their account. Besides, the valuations of Orkney and Zetland, in order to proportion the cess, were distinguished by order of the treasury in the year 1693; and Orkney made to pay two parts, and Zetland a third: And the pursuer insists against the defenders only for two-thirds of his fees.

The Lords found, That Orkney and Zetland being one stewartry, the pursuer must call the freeholders of both Isles, and prove their valuations, so as each may be liable only for their own share. For it was thought that the valuations, in

order to assessment, could not be a rule in this case ; seeing those only who hold *in capite* are liable for the fees of Commissioners to the Parliament.

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1710. *December 13.* WILLIAM CUNINGHAM, late Provost of Irvine, *against*
The SKIPPERS of IRVINE and SALTCOATS.

MR. WILLIAM CUNINGHAM having charged the skippers of Irvine and Saltcoats, upon a decret obtained at his instance against them, before the Admiral, to pay, in the terms of the Act 55, Parliament 1661, forty shillings Scots for every cocket, procured from him ; who is clerk of the cockets of Irvine and Saltcoats, by a liferent gift from the sovereign, purchased before the union of the two kingdoms : the skippers suspended, and raised reduction of the said decret, upon this ground, that, by the fourth and sixth articles of the Union, there is not only a freedom of trade and navigation, but a general communication of all other rights, privileges, and advantages ; and all manner of allowances and encouragements in relation to trade, that obtained in England before the Union, are expressly given to Scotland ; consequently, the skippers there must have the English ease of their cocket-dues.

REPLIED for Mr. William Cuningham,—By the twentieth Article of Union, liferent offices in Scotland being specially reserved, and his office being such ; it must be effectual to him in the same manner as if the treaty had not been, or as he enjoyed it before. The fourth or sixth articles, which only concern burdens and duties, having an immediate influence upon the subject of trade, do not influence the cocket-dues, which are not an imposition upon the subject of trade ; seeing the nature and quantity of the cargo exported and imported doth not alter them ; but are a personal prestation or fee due by the masters of ships to the man employed in that office, for his service in writing them free passes. And it were impracticable to reduce all casual or remote burdens, concerning navigation, to one standard ; for at that rate, seamen's wages, anchorage, and shore-dues, which differ in different places, should be the same every where. Again, even the sixth article excepts duties upon import and export, which the subjects of either kingdom are specially exempted from, by their private rights. Which exception (though the privilege of exemption only be exprest,) must be understood to comprehend all private rights ; as well those extending the burden, as those exempting from it : the reasons for both being the same. Again, that all private grants in favours of particular persons, were understood to be reserved, at least not comprehended under the general article, is plain from several instances. The city of London enjoys particular privileges, both of exemption from, and exacting burdens, not usual in other places. Particularly it is exempted from the prisage, which is a tun of ten, or two of twenty and above, of all imported wines, paid in many places of England, by ancient custom, for the use of the sovereign's family. And though there be no particular exception of the privilege of the East India Company in the articles of Union, these are all without controversy enjoyed as formerly. Again, albeit the privileges competent to the Sugary of Glasgow, and the aquavitæ brewers in Farren-