

1712. June 19.

The BREWERS in and about Edinburgh, Supplicants, *against* The SHERIFF-DEPUTES of Edinburgh.

THE Brewers in and about Edinburgh represented by bill, that they and many other sets of people, who make the fiars the rule of their price, being much concerned in striking thereof; and finding that the last Candlemas fiars within the Sheriffdom of Edinburgh, were made without an inquest, and exorbitantly beyond the common price betwixt Yule and Candlemas, which is the usual rule, had raised reduction of the said fiars, with a conclusion, that the Lords should bring the same to the true standard; and executed their summons against the Sheriff-deputes, who decerned these fiars, and their clerk, the keeper of their records. Therefore the petitioners craved, that since their process was very justly *actio popularis*, the Lords would appoint the same to be summarily enrolled in the next week's roll of ordinary actions for the outer-house, with power to the Ordinary to hear and discuss the same; at least, that the Lords would admit of their petition, with the extract of the fiars produced, as a ground for tabling the matter before their Lordships, and to proceed therein with all expedition.

To all which it was *answered* for the Sheriff-deputes; By our law and ancient custom, the striking of the fiars is the right and privilege of the Sheriffs, who, for information to the Crown of the current prices, do yearly return to the Exchequer an account thereof, and are accountable only to her Majesty for any abuse or neglect therein. As the petitioners could not compel the Sheriff-deputes to make a fiar, neither can they quarrel them for having made one; for, if it were otherways, why might not the gentlemen of the shire quarrel a low fiar? And so there should be no end.

THE LORDS refused the desire of the bill.

Fol. Dic. v. 1. p. 500. Forbes, p. 597.

. Fountainhall reports this case:

1712. June 17.—THE Brewers in and about Edinburgh, conceiving that the Sheriffs of Mid-Lothian had struck the fiars of victual too high, far above the market prices, they gave in a petition to the Lords, craving they may be summarily cited to answer to the complaint, seeing the affair could not admit of the ordinary *induciæ* allowed in processes, that the Lords might rectify and reform the same. It was first doubted if the Brewers had any legal title to reclaim? *2do*, If they were bound to answer in this form upon a bill? It was said, this complaint was *actio popularis*, competent to all the lieges who bought a chopin of ale; and the Brewers had a special interest, for they had bought many gentlemen's victual without any other price but the fiars, which being so exor-

No 182.

The brewers having raised reduction of the Sheriff fiars of Edinburgh, as being made without an inquest, and exorbitant by exceeding the common price betwixt Yule and Candlemas; the Lords refused to take cognizance of the matter.

No 182.

bitant, they were more prejudged; and the Sheriff was bound to answer; for this was a judicial act, in all which they are subject to the Lords' review; neither had they followed the practice of this and other shires, to set them on the report of an inquest, but had done it *brevi manu* to gratify the heritors. THE LORDS, without determining either the title or competency, allowed the Sheriffs to answer and vindicate themselves if they can.

Fountainhall, v. 2. p. 739.

No 183.

1725. *December.* LEWARS *against* EARL of HADDINGTON and his Deputes.

IN a reduction of the fiars of East Lothian, *imo*, Because of their exorbitancy; *2do*, Because not struck by a jury impannelled according to the prescription of the act of sederunt 21st December 1723, it was objected, there is no reduction competent in the nature of the thing of Sheriff fiars, which are nothing else, but a return made by the Sheriff, as the King's officer, into the King's court of Exchequer, of what he finds to be the reasonable price of grain for that year, which is not matter of jurisdiction at all to be subject to the review of a superior court. THE LORDS, notwithstanding, found this matter subject to a review, and sustained themselves judges. *See APPENDIX.*

Fol. Dic. v. 1. p. 500.

S E C T. X.

Jurisdiction of the Court of Session, in reviewing the procedure of Ecclesiastical Courts.

1768. *February 6.*

No 184.

A minister pursued the heritors for payment of his stipend, who produced an extract of the sentence of his deposition by the presbytery, under the hands of

DAVID DICKSON of Kilbucho *against* The HERITORS of the Parish of Newlands.

MR DICKSON had for many years been settled minister of the parish of Newlands; but, in April 1767, the presbytery of Peebles, upon an action which had been brought before them, accusing Mr Dickson of sundry irregularities, pronounced a sentence, deposing him from the office of the ministry; and the Heritors of the parish having refused to pay Mr Dickson his stipend, in regard of the above mentioned sentence of deposition, and that another minister had been presented to the kirk by the patron, Mr Dickson charged the Heritors with horning, which charge they suspended.