

him a liberty of courts, and a right to bloods, when he was the first attacher, before the superior or sheriff. No 264.

THE LORDS preferred the vassal.

*Gilmour, No 174. p. 125.*

1692. December 23.

CHESSORS, Tenants in Fedderet, against Mr ROBERT KEITH of Lentush.

THE LORDS found, though Fedderet held of Drum, and so was not the King's vassal, yet his charter being *cum curiis et bloodwitis*, that it gave him right to make a deputation of bailiary; and that it has been so decided, is both observed by Durie and Stair; and that the baron bailie might, in absence of the party cited, both lead probation for the riot, and fine him for that, and also amerciate him for his contumacy and absence; and that he might fine for blood as high as the sheriff, viz. in L. 50 Scots, and for absence in L. 10; but that the Lords might modify these fines. But the LORDS having considered the sundry informalities in the sentences and executions of pointing, though they would not annul the decreet (for then the pointings would have been a spulzie), yet they decerned Lentush in restitution of their pointed goods for his fines, if they were extant; and if they were sold or disposed of, to count for the prices contained in the instrument of pointing; but would not give the tenants their *juramentum in litem*; and thought it reasonable, that during the dependence between Artramford and Lentush, neither of them should harass their tenants with fines, till it should be determined which of them ought to have the possession.

*Fol. Dic. v. 1. p. 504. Fountainball, v. 1. p. 538.*

1752. July 1. BRIGS and Others against The DUKE of BUCCLEUGH.

By act of parliament 1685, certain tolls were appointed to be levied at the two bridges of Dalkeith, and the power of levying them was granted to the bailie of the regality of Dalkeith, and his deputy, and their successors in office, for particular uses narrated in the act. The regality of Dalkeith having been taken away by the act of parliament 20th Geo. II. and the office of bailie of regality thereby abolished, Brigs and others, inhabitants of Dalkeith, prayed the Lords to appoint a factor for levying of the said tolls.

The Duke of Buccleugh, (to whose family the regality of Dalkeith belonged) opposed this, and *pleaded*, That the act by which the tolls were granted, empowered the bailie of regality of Dalkeith to levy and apply them; that his power naturally devolves to the baron bailie, as he is the only magistrate now remaining within the territory of Dalkeith, and derives his jurisdiction, as the

No 265.

A charter from a superior *cum curiis et bloodwitis*, entitles the vassal to name a bailie, who may fine in L. 50 for blood, and L. 10 for contumacy.

No 266.

By an old act of Parliament, certain tolls were appointed to be levied by a bailie of regality. After that office was abolished, the Court appointed the baron bailie to levy the tolls.

No 266. bailie of regality did, from the proprietor of Dalkeith; and, *separatim*, if any doubt should arise as to this, it could only be removed by the Legislature itself.

“ THE LORDS found the baron bailie of Dalkeith must come in place of the bailie of regality, for uplifting the tolls and customs mentioned in the petition, and therefore refused to sequestrate.”

Act. R. Dundas.

Alt. R. Craigie.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 353. Fac. Col. No 20. p. 41.

## DIVISION VIII.

### Commissary Court.

#### S E C T. I.

#### Of Superior and Inferior Commissaries and their Privileges.

1666. December 24. CRICHTON *against* KILPATRICK.

No 267.  
Found that  
inferior Com-  
missaries  
have had no  
power to issue  
confirmations  
dative *ad*  
*omissa*.

IN an action betwixt Crichton and Kilpatrick, anent the goods of a defunct, to whom they were both confirmed executors, by two several testaments dative, the LORDS found, That the party who had last confirmed, had no right; and that when a testament was once confirmed, no other party could have right by a posterior testament dative, unless it were an dative *ad omissa*, which was not in this case. Farther, the LORDS found, That inferior Commissaries have had no power to confirm datives *ad omissa*.

Fol. Dic. v. 1. p. 504. Haddington, MS. No 1179.