

1687. The MAGISTRATES of EDINBURGH *against* The COLLEGE of JUSTICE.

*January 14.*—SOME advocates and writers having given in a bill of suspension against John Hunter, collector of the King's cess in Edinburgh, ALLEGING,—That, by old exemptions from the Pope, at the institution of the College of Justice, and by the 153d Act 1592, and 275th Act 1597, they were free of all taxations; and, by the 23d Act 1661, all their privileges were ratified: ANSWERED for the Town,—The old exemptions, in 1547, were only temporary, granted by the Duke of Chattelherauld, then governor to Queen Mary in her minority; and he could give no more: and the posterior Acts of Parliament, exeming none but the Lords of Session, derogated from all former ones. *2do*, They complained that the Magistrates and the Stent-masters were free of stent. *3tio*, That themselves were overburdened.

The Lords, on Kemnay's report, found all the College of Justice (except the Lords,) liable to pay cess; and that Magistrates were free, in remuneration of their pains and trouble, by King James VI.'s sett, or decreet-arbitral, in 1583; as also the Stent-masters, by immemorial custom. And if there was any inequality, by imposing more on the rents and houses of the members of the Session than others, and if they had not the customary deduction and allowance of 20 *per cent.*, (wherever they gave up their true rent,) the Lords ordained it to be redressed and rectified.

They pretended also, that the incorporation's lands were free of cess; but they were not: and that the Town's common good was not stented; but what lies in the shire pays with it, and their imposts on wine and ale are casual.—Yet they may be as well valued as one's trade is. *Vide* the rest of this affair, 23d February 1687. *Vol. I. Page 440.*

*February 23.*—The College of Justice's declarator against the Town of Edinburgh, of their several privileges and exemptions from annuities, impositions at the ports, and Leith harbour, and causeway maills, was this afternoon advised. Two points were left undecided; the one, as to the Town's criminal jurisdiction over the members in case of riots; the second, how far tradesmen could hinder the Session to bring within the Town and employ unfreemen, as tailors, masons, &c.; for which instances were brought on both sides.

The interlocutor is long, and needs not be here inserted, because it is printed by way of Act of Sederunt.

What the Town gained, was, it determined who were members of the Session; which cut off many pretenders. *Vol. I. Page 449.*

---

 1684 and 1687. The COUNTESS of WEYMSS *against* MACKENZIE of APPLECROSS.

See the prior and posterior parts of the report of this case, in the Index to the Decisions.

1684. *December 18.*—IN the Lady Wemys and Applecross's cause, mentioned 3d December, the Chancellor openly rebuked Applecross at the bar,

that his agent had given his servant a dollar, to convey the information to him ; and that he would not allow his servants to take any money from the people. And though the king's advocate excused it, by terming it a common practice, yet he declared he would not suffer it.

The President and the Lords were silent ; and some of them appeared not to be much of the Chancellor's opinion.

*Vol. I. Page 322.*

1687. *February 26.*—THE Lady Wemyss gains her cause against M'Kenzie of Applecross, mentioned 23d December 1684.

*Vol. I. Page 450.*

1687. *February 26.* JAMES HUNTER, Treasurer to the Advocates, *against* DAVID DOUGLAS, Advocate.

MR James Hunter, treasurer to the Faculty of Advocates, having charged Mr David Douglas, advocate, to pay 500 merks yet resting of his entry-money, as coming in by a bill without examination, (for he had paid the other 500 merks ;) he gave in a bill of suspension to the Lords, pretending the act for 1000 merks had never yet taken effect, and was but *ad terrorem* ; and he would rather resign his gown, having but small employment.

The Lords stopped execution against him till the 1st of June.

*Vol. I. Page 450.*

1687. *June 3.* JOHN HAMILTON *against* NINIAN LOWIS.

A CASE, depending before the Bailies of Edinburgh, was brought in before the assessors, and much agitated among the lawyers, between Ninian Lowis, apothecary, and John Hamilton, Duke Hamilton's bailie-depute in the Abbey, who had set a shop, in Edinburgh, to Ninian ; but he afterwards falling to be better provided *aliunde*, sets it to one Brown, who sold ale : and John quarrelled the sub-set on thir grounds :—*1mo*, That he has a cellar below, and this was *in æmulationem vicini*, and prejudged their change. *2do*, That tacks are *strictissimi juris* ; and so this not bearing to assignees, it was merely personal to himself ; and he could not put in another, else he might bring in a rebel, and so render him, the landlord, obnoxious to the hazard of law ; or set it to his enemy, or to one so negligent as might endanger it by fire. *3tio*, In the present case *electa est persona* ; and both Stair, *tit. Tacks*, and Craig, are clear, that they cannot sub-set the whole : for one may set off chambers, and parts of their house. ANSWERED,—If I pay the maill, you are not concerned : but here your condition is meliorated ; for you have both the tenant and sub-tenant liable for the maill ; and the axiom against sub-setting is only against assigning, which is a total denuding, and a freeing of the first tenant : but a sub-set is lawful ; and was so found 12th March 1686, betwixt *Sir James Rocheid and Moody*, sub-tenant to Haliburton and Borthwick ; though that tack excluded assignees, and was in country lands ; whereas this is *in prædiis urbanis*, where often the tenant is better than the landlord. *2do*, Stair adduces