

finer, the Magistrates will notice them no more: and the fines come not to their use, but to the poor.

It was referred to Carse; who having reported it on the 29th of July, the Lords refused the Fleshers and Vintners' bills, and remitted them back to the Magistrates of Edinburgh, whose procedure they approved. *Vide* 19th July 1687. *Vol. I. Page 464.*

*July 16.*—The Privy Council allows the landwert Fleshers to bring in their meat to Edinburgh all the days of the week, and that the Town appoint them slaughter-houses at the North-loch side; and discharges the Town, or the Edinburgh Fleshers, to exact any imposition from them. This, on the matter, dissolves the Fleshers of Edinburgh's seal of cause from being a deaconry, or corporation. And some think the Baxters' seal should be also cased and annulled, and all permitted to bring in bread every day; as the Maltmen are discharged to incorporate into a deaconry. See Acts 121 and 122, Parl. 1540. *Vol. I. Page 467.*

1687. *July 20.* GEORGE GORDON and SIR JAMES DICK *against* RIGG of CARBERRY.

GEORGE Gordon and Sir James Dick of Priestfield, his tutor, against Rigg, lately of Carberry. The Lords, on Carse's report, find the resolute clause and irritancy was not adjected to the clause *de non alienando*, but to that for not payment of the feu-duty. But, notwithstanding that the term assigned is already elapsed, for proving that a great sum was given for the composition *eo nomine*, that the right was burdened with an irritant clause *de non alienando, ad redimendam vexationem*, allow the defender to adduce his witnesses, and to prove the same betwixt and Tuesday next; and, in the mean time, supersede extracting. And declare they will allow what shall be proven in manner foresaid.

*Vol. I. Page 468.*

1687. FOTHRINGHAME of POURY *against* GRAHAM of CLAVERS, NORTHESK, and PANMUIRE.

*June 10.*—FOTHRINGHAME of Poury gives in a bill against General Graham of Clavers, alleging he had violently stopped his possession of some assize fish due to him by the infestments in Broughty Castle when Lord Gray had it, *viz.* nine fish out of every boat, for their liberty of anchoring on the rocks there in storms, and to gather bait; which one infest in wair may hinder any to do on his sands. See Skeen, *de Verb. Significat. voce Wair.*

The Lords ordained Poury to condescend on the deeds of violence. But he was not able, farther than that Clavers had discharged his own tenants to pay it; which he might do: but, as chief magistrate and constable of Dundee, he allowed the fishers in the market to refuse him payment.

The Lords discharged Clavers to stop him in his possession, seeing *turbatus et spoliatus est ante omnia restituendus* ; but found Poury could not bring in the point of right to be discussed summarily on a bill, unless Clavers consented, who was just going for London. And, seeing some of the fishers had suspended, and others had advocated, they ordained the cause to be brought in in common form, on the discussing of these, or by a declarator. *Vide* 21st July 1687. *Vol. I. Page 455.*

*July 21.*—Fothringham of Poury's case against Northesk, Panmuire, and Clavers, mentioned 10th June 1687, was reported by Edmonston ; and the Lords find his charter *cum piscibus* gives him a sufficient right and title to prescribe the assize-duty of nine fishes out of every boat that passes by Brughly-castle, once belonging to the Lord Gray, for their anchoring on the rock, and gathering bait on his sands, if so be he had possessed 40 years by virtue of that title : though it was ALLEGED,—*1mo*, The clause, *cum piscibus*, was no more than *cum piscationibus*, a mere liberty to fish. But if it had meant a duty out of other folks' boats, it would have been so conceived. *2do*, This cannot introduce a servitude upon my lands and tenants, not being exacted on the land, but at sea ; and so the master's knowledge *et patientia*, to induce prescription, cannot be here presumed.

As for Clavers, he was 17 years of these 40 a minor, and so they must prove 40 years before that ; likeas there were other interruptions.

Poury was ordained to produce his charters. *Vol. I. Page 468.*

1687. *July 21.* JAMES NICOLSON *against* SIR JAMES DICK.

JAMES Nicolson, bailie of Edinburgh, as assignee by Sir William Nicolson, pursues Sir James Dick, to count upon a ticket given by him to Sir John Nicolson, not to deliver up an assignation, made by the co-partners of the customs, to Captain Andrew Dick, till all was cleared with (and then follows his subscription,) "James Dick." ALLEGED,—This imported no more but till all was cleared with himself, being cash-keeper, and no ways relates to the other co-partners. *2do*, Sir William Nicolson was furious when this assignation was granted.

The Lords, on Saline's report, sustained Bailie Nicolson's title, Dick of Grange (for whose behoof Sir William Nicolson pursued it,) concurring with him ; and found Sir James Dick's ticket implied an obligation on him to count to the co-partners ; and therefore ordained him to exhibit his count-books on oath, and to count to them for the effects of that assignation which he acquired from Captain Dick. But he alleged, he was only to count for £42,000 Scots, which was the roup at which these effects were then valued.

*Vol. I. Page 468.*