

1704. December 12. JAMES SCOT *against* ALEXANDER BELCHES.

JAMES Scot, sheriff-clerk of Edinburgh, being accessory to the slaughter of one David Alexander, betwixt Leith and Edinburgh, in 1696, and having fled, he was denounced fugitive in the criminal court, and his place gifted to Alexander Belches; at whose admission his brother John Scot compears, and protests against it; taking instruments in the hands of Robert Thomson, clerk-depute, and of John Inglis, notary, whom he brought along with him, conform to the 81st Act Parliament 1540. And the said James having, on letters of slaynes and an assithment, obtained a remission of the crime, and relaxed himself from the fugitation, he intents a declarator against the said Alexander Belches, for being reponed to his office of sheriff-clerk, and for having all the profits and emoluments of the office refunded to him, since the date of his protest: and, for the better founding his process, he gives in a bill, craving Mr Inglis and Thomson may be ordained, conform to the foresaid 81st Act, to give him forth the extract of his instrument taken in their hands, against the said Alexander Belches' illegal and unwarrantable admission into his office.

To which it was ANSWERED by Robert Thomson,—That he acknowledges there was such an instrument taken, and whereof he has a minute standing in the sheriff-register; and he is willing to give it precisely in the terms as it there stands, but Mr Scott would have him adject other things thereto; and as to Mr Inglis, it is so long ago, that he has little or no memory thereof, and of such instruments he kept no protocol; and if he should now extend it, the witnesses would not sign with him; and it should have been required sooner.

The Lords found Robert Thomson was not obliged to give out the instrument in other terms than as it stands recorded in the sheriff-court books as its warrant, unless they would offer to prove, by his oath, that it was disconform to the *res vere gesta*, and what was *actum et tractatum* at the time.

When this declarator comes in, several questions will occur; as, first, Whether the office of sheriff-clerk can fall under a single escheat? Where the horning proceeds for a civil cause of debt, it has been found the office is not thereby lost or extinct, 6th February 1666, *Archbishop of Glasgow against the Commissary-clerk of Dumfries*; but where the denunciation is for a criminal cause and capital crime, now acknowledged by taking the remission, there may be more debate. 2do, *Esto* he had access to his place *pro futuro*, it may be contended, that Mr Belches was *in bona fide* for the bygone profits of the place, notwithstanding the protestation against his entry; and that it was so found by the Lords, 13th February 1624, *Thomson against Law*, marked by Dury; where the Lords assoilyied from the intermediate fruits, though the gift was reduced, as *bona fide percepti et consumpti*, in respect of the other's silence all that time.

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1704. December 16. RORY MACKENZIE *against* The EARL of MARCHMONT.

MR Rory Mackenzie, secretary to the African company, raises a process for wrongous imprisonment against the Earl of Marchmont, late Lord Chancellor,