

No 13. ministration of that impost, and the misapplication of the money. In the last case, the citizens might have an interest to call the Magistrates to an account, but not in the first, where they are invested with a discretionary arbitrament to manage to the best advantage they think fit. As also, there was a disparity betwixt the Magistrates setters, and the assignees who *bona fide* entered into a contract with the town, by which there was a *jus quæsitum* to them, which could not be taken away by others offering more; for however that might affect the Magistrates, it could not touch them, especially seeing, that though it be the time of war, and fear of infection and dearth, and that the consumption is now less in Edinburgh by the Union, there being neither Parliament nor Council now, yet they had taken their hazard of famine, dearth, pestilence and war, and renounced the craving any abatement on these accounts.—THE LORDS refused to sustain process at these pursuers instance, as having no sufficient title to quarrel the way and method of their administration of that gift, as being left to the Magistrates arbitrament and discretion; but did not determine what interest citizens might have to question misapplications; and they thought the tacksmen in a stronger case by their *jus quæsitum*, which could not be taken from them. In this case a declinator was given in against one of the Lords, That he was brother-in-law to Gavin Plumber, who was Town Treasurer at the time of this agreement, and one of the contractors; but this being only *ratione officii*, and as an administrator, and now out of place, they found it did not fall under the act of Parliament anent declinators of judges.

July 27. 1711.—THE cause mentioned *supra*, 12th January 1711, Paterson *contra* the Town of Edinburgh was advised, and the declinator there proponed against one of the Lords being of new given in, and reasoned, they divided equally; and the President by his vote rejected it.

Then the LORDS entered on the cause; and it being stated whether the Town was obliged to set their impost by a roup only, or might do it by way of assignment, it carried by a plurality of seven against six, that by act of Parliament in 1693, giving it, they were at liberty in the managing and administration of it, and not tied precisely to expose it to a roup. Whereupon Mr Paterson instantly protested for remeid of law to the British Parliament. See APPENDIX.

Fol. Dic. v. 1. p. 231. Fountainball, v. 2. p. 625. & 667.

1712. January 31. CALDER *against* OGILVIE.

No 14.

In a question, whether one of the Lords might be declined in a cause where one of the parties had married his niece?—THE LORDS found that he might be declined in a cause carried on immediately by his niece, but not in her husband's concerns that were not derived from her.

Fol. Dic. v. 1. p. 230. Fountainball.

* * * See This case, No 12. p. 197.