

## FAIRS AND MARKETS.

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1552. November 16. GEORGE GIBSON *against* THOMAS KER.

**I**N an action persewit be George Gibson against Thomas Ker, for breaking of ane arrestment, it was *alleged* be the said Thomas, That he might lawfully depart, notwithstanding the alleged arrestment, because it was done in time of fair, whilk gives immunitie in time thereof.—To the whilk George *replied*, That gif the arrestment had not been lawful, he should have tarried while it had been declared null; whilk reply was repelled.

*Fol. Dic. v. 1. p. 294. Maitland, MS. p. 114.*

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1629. July 2. BISHOP OF GAITHNESS *against* FLESHERS in EDINBURGH.

If any buy any stolen goods in a market, the owner of the goods may pursue the buyer thereof, although the thief be executed, for repetition of his gear, but not to have them punished in their persons.

*Fol. Dic. v. 1. p. 294. Auchinleck, MS. p. 22.*

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1639. March 19. FERGUSON *against* FORREST.

**O**NE Ferguson pursuing one Forrest, for restoring to him of his mare, which properly belonged to him, and was stolen from him off the ground of the lands of ———, whereupon he dwelt, and which mare was then, and before in his possession, and was his own mare, so known to the neighbours about in the country, and the defender *alleging*, That he ought to be assoilzied, because he bought the mare libelled, in the open market, at a public fair, in the market time of day, and paid the price thereof, which ought to liberate the defender, being so bought and sold in a burgh royal, in a public ordinary fair day kept in that town; likeas, the mare is now dead, and so there is no place nor possibility of restitution, albeit the action might be sustained;—THE LORDS repelled the allegiance, and sustained the action, which was found not elided.

No 1.

No 2.

No 3.

A person buying a stolen horse, though in a public market, is liable in restitution to the owner, and has recourse against the seller.

No 3. by this exception of buying in a public market ; for the excipient ought to have taken *borgb* and *ham-bold* from the seller, conform to the old laws of the realm, if he would have provided for his own security ; and the dying of the mare, albeit it made it impossible to restore her, yet in place of that, the LORDS found the defender should refund the price. See MOVEABLES.

Act. Nairn.

Alt. Johnston.

Clerk, Hay.

Fol. Dic. v. 1. p. 294. Durie, p. 885.

1642. June 24. FALCONER of Glenfarquhar against L. GLENBERVIE.

No 4.  
A person was infeft with the immemorial privilege of a fair. A neighbour obtained a subsequent grant of a fair which interfered with the former. Found, that the second could not keep his fair, except at the distance of a month from the other.

MR DAVID FALCONER being infeft in the lands of Glenfarquhar, with the privilege of an ancient fair, called *Padie Fair*, from Palladius, holden upon the said lands of ——— past memory of man, from the 1st of July to the 7th day thereof, pursues the Laird of Glenbervie, who had acquired from the King a late infeftment, *anno* 1635, of his lands, with the privilege of a fair to be holden on his lands of Dillivard, which lyes within a mile, or less, of the pursuer's lands, whereon his fair holds, to be holden from the 24th of June to the 1st of July yearly, to hear it be found, that the said infeftment ought to be declared null, so far as concerns, or may be extended to the having of any fair on the said lands of Dillivard the time foresaid, as being a privilege privately purchased, and indirectly tending to take away the liberty and privilege of the pursuer's fair, in respect that the pursuer's lands and the defender's, which has the fairs, are not distant from others a mile of ground ; and the time of the holdings is so ewest, without any interval of time, that the defender's fair, (which ends the very day when the pursuer's fair begins,) must necessarily evert all privilege and use of his fair, and prejudice him of all commodity which he can have thereby, and tends manifestly to kindle trouble betwixt the parties, and to disturbe the quietness and peace of the country: Which action being heard in the LORDS presence, and the parties and their advocates being heard to dispute thereupon, they found, That the defender's infeftment ought not to extend to the privilege of a fair, to be holden of such nearness to the said lands, for keeping of the same, within the time contained in his infeftment, which is in such vicinity, and immediately precedes the time of the pursuer's ancient fair ; the defender having taken the same to end the same day when the pursuer's fair begins ; for however he might take a right from the King of his lands, with the said privilege of a fair, yet that privilege ought not to have been sought, to destroy the effect and use of that ancient fair, granted to, and bruiked immemorially by the pursuer, and his authors and predecessors of before ; and therefore they ordained that privilege, so far as concerns that time of the holding thereof, to cease, as impetrate in *amulationem*