

[See the subsequent parts of the report of this case, Diet. p. 16679 and 10274.]

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1676. *December 7.* The TOWNS of GLASGOW and DUMBARTON *against* Sir JOHN SHAW of Greenock and Others.

THE Lords this day advised the declarator pursued by the towns of Glasgow and Dumbarton against Sir John Shaw of Greenock, and other neighbouring gentlemen, and sustained it thus,—That none but royal burghs had power to import wine, brandy, salt, and other staple commodities, mentioned in the act of Parliament in 1672; and repelled the defence founded on that act of Parliament, as to the salt and brandies not being included therein; and as if the burghs of regality and barony had liberty to import salt, because it conduces for the manufactory of fishes, and curing them; and found the importer incurred not the confiscation of his moveables, but only the thing imported was confiscated: and, within their own bounds, gave them power of seizure; and, elsewhere, gave them liberty to pursue the forfeiture of the goods, though they be sold.

*Quærebatur*—If the freeman of one burgh royal had liberty to trade in another, for then he might palliate unfreemen's goods. See King David's charter to the burghs of Scotland, in 1364. *Vide supra*, January, 1670, M. Mowat *against* Town of Lithgow, No. 106.

*Advocates' MS. No. 515, folio 267.*

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1676. *December 9th.* ARTHUR HUTTON *against* ARTHUR HAMILTON.

ARTHUR HUTTON, burghess of Hamilton, pursues Mr Arthur Hamilton for 1000 merks, contained in a bond, wherein his father was cautioner. His defence was *exceptio litiscontestatæ*; in so far as the defender's father being charged on that bond, he had suspended upon this reason, that the debt was discharged and innovated by a posterior transaction and agreement between the pursuer and the principal debtor, whereby he had renounced the cautioners, and taken him solely to the principal: and which reason being admitted as relevant, a day was assigned for proving it, and an act of litiscontestation extracted thereon; but, *medio tempore*, the suspender dying, the affair lies over, and cannot be otherwise insisted on now but by transferring that act.

And so my Lord Halton found the act of litiscontestation in that suspension behoved to be the rule transferred and insisted in, unless we reduced it, or the agreement between the principal debtor and us, upon the irritancy and failyie.

*Advocates' MS. No. 516, folio 268.*