

No 379. ' points the complainers to give public intimation of the appointment of said
' meeting by advertising the same.' See MEMBER OF PARLIAMENT.

Reporter, *Alva*.

Clerk of the bills.

Fol. Dic. v. 3. p. 359. Fac. Col, No 42. p. 112.

DIVISION XVII.

Town Council of Burgh, and Bailie Court.—Burgh of Barony.

1663. *June 18.*

FRANCIS HAMILTON *against* MITCHEL and KEITH.

No 380.

SIR ALEXANDER KEITH of Ludquharn being obliged by bond to Robert Mitchel in Leith, for the price of certain bolls of victual, was arrested in Leith, till he found Francis Hamilton cautioner as law will; and both being pursued on the act, raised advocation on this reason, that the Bailies of Leith had unjustly forced him to find caution as law will; he not being dwelling in Leith, and Leith not being a burgh royal, but a burgh of barony. It was *answered*, That the privilege and custom of the town of Edinburgh, was to arrest within Leith, and all other privileges and pendicles thereof.

THE LORDS found that it behoved to be condescended, in what place of Leith Ludquharn was arrested; for the Pier of Leith was a part of the burgh royal of Edinburgh, and was served by a Bailie of Edinburgh, called the Water Bailie, and if he was arrested there, it was valid; but the rest of Leith is but a burgh of barony, and in that part thereof, the Bailie is called Baron Bailie, it were not valid.

Stair, v. 1. p. 192.

No 381.

1677. *February 22.*

LAW *against* DICK.

For what
kind of debts
Magistrates
may sum-
marily arrest,
till caution
be found.

JOHN LAW having sold to Robert Dick a bargain of bear, which befel to John, as a part of his father's stipend, he having found Robert Dick in Edinburgh, arrested him till he found caution to answer as law will, for payment of the victual. Dick gave in a bill of suspension, on this reason, that by the act of Parliament anent the privilege of royal borrows, they are prohibited to ar-

rest any person except for merchants accounts, stablers, cooks, or vintners accounts, furnished out of their shops, houses, or stables, for which there is no bond, nor subscribed account; and this bargain could not fall under this clause. It was *answered*, That victual is an ordinary merchandize, and if it had been bought out of any merchant's garner in Edinburgh, it would have fallen under the act, as well as any other merchandize, and there is no odds whether the merchandize fell to the merchant as executry, or if he bought the same, for whole shops fall to merchants as executry. It was *replied*, That the act extends only to furniture received within royal burghs, for which a summary execution was granted, when there is neither bond nor subscribed account, but the selling of victual, which is in the country, was done by the seller, as *quilibet*, and not as a merchant having the same in store, as if a burghess would sell the farms of his lands which were not yet received, but in his tenants hands.

THE LORDS suspended the bond of caution *simpliciter*, as not falling within the warrant of the late act of Parliament.

Stair, v. 2. p. 520.

* * * This case is reported by Gosford, No 97. p. 1984, *voce* BURGH ROYAL.

1712. July 8.

THE BUTCHERS of DALKEITH and MUSSELBURGH *against* The MAGISTRATES of EDINBURGH, and INCORPORATION of SKINNERS there.

THE Butchers of Dalkeith and Musselburgh, pursued a declarator against the Magistrates of Edinburgh, and the Incorporation of Skinners, concluding, That it shall be lawful for them to resort to the market of Edinburgh with their fleshs and skins, and to sell them there at all freedom, and to export out of the market their said skins, in case they be not sold there; and that the Incorporation of Skinners can neither by themselves, nor with the concurrence of the Magistrates, set a determined price upon their skins, or oblige the butchers to sell at a price; nor can the Magistrates, upon their refusal, incarcerate them, or arrest their skins.

Answered for the defenders; two things by law and immemorial custom are understood to belong to burghs, to which markets have been granted; viz, *imo*, To oversee that no insufficient goods be brought to sale, least they impose upon the weak, and break the credit of commerce; *2do*, To set rules and prices to the markets, according to the condition and plenty of goods, and circumstances of trade. It being then granted, That the Magistrates may visit and set prices; it doth follow, by necessary consequence, that goods imported to any market should be sold there, for the current prices, if offered, and cannot be kept up by the proprietors, or carried home again. Because, thereby mer-

Found, that country butchers are at liberty to sell the skins of cattle in Edinburgh, at the best price, and are not bound to sell them at a price fixed by the Magistrates. If they get not their own price, they may carry them back, and neither the Magistrates nor skinners have power to secure the skins, &c. on that account.