

brought from England to Leith, conform to a charter from King Charles the First in 1636, gifting that imposition to the Town for paying their debts :

ALLEGED,—By the articles of the Union, a communication of the trade being introduced, the said taxation falls ; the English goods can pay it no more than Scotch. *2do*, It is against the claim of right, declaring all such gifts, without consent of Parliament, null.

ANSWERED,—All private rights, especially those of the royal burghs, are expressly reserved by the articles of the Union, so that a free trade betwixt the two nations can never take away this right from the Town : and my Lord Godolphin, Lord Treasurer of Great Britain, having, at the desire of the Magistrates of Edinburgh, consulted Sir James Montague, her Majesty's Solicitor-general, on this point, he has given his opinion in writing, under his hand, That the Town of Edinburgh has as much right to it, notwithstanding of the articles of the Union, as the City of London has to their duty of scavage and package, which they still exact from the Scotch ships.

REPLIED,—That Carlisle might have as well continued the exacting their custom upon our black cattle, imported that way to England ; but they, finding it at an end by the Union, applied to the Parliament of Great Britain, and got an equivalent for making up their damages ; and the Town of Edinburgh's gift must vacate the same way, and there is room for applying to get an equivalent in place thereof ; and Montague his opinion is no more than if any of our lawyers should assert it ; neither has the fact been truly stated to him. And the Town's possession these sixty years bygone signifies nothing, for no prescription runs against fundamental laws founded on public utility and the rules of government ; as was found in that famous decision, *January 1681, Jack against the Town of Stirling*. And none will call English goods foreign now, which is the words of their gift,—Of all foreign commodities imported *intra fines regni Scotiae* : the limits betwixt the two nations are now ceased, the wall of division is broken down, and so they can be no more burdened with this merk upon the ton.

The Lords considered this struck deep ; for, by the same arguments, the Town's imposition of two pennies on the pint of ale might be quarrelled ; though they wished the Town might apply for an equivalent ; therefore they ordained it to be heard in their own presence. *Vol. II. Page 445.*

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1708. *July 2.* ALEXANDER FORBES *against* CHARLES DICKSON and his FATHER.

By indentures betwixt Alexander Forbes, goldsmith in Edinburgh, and Charles Dickson, son to the provost of Forfar, in 1702, the said Charles becomes his apprentice for seven years, and is obliged to attend, and for every day's absence to serve two ; and, for every penny he skaiths his master, to repay two pennies, under the penalty of £40 Scots, over and above performance. In 1704, the boy being corrupted with bad company, he begins to dispose on some of his master's bullion, and to pawn it, and then totally deserts his service. Whereupon Forbes charges the apprentice's father for the desertion, and damage incurred thereby ; being forced to employ journeymen to do his work, to his great expense.

The father and son suspend ; and ALLEGE,—It was the master's fault, in cruelly beating him, that he ran away. And, a conjunct probation being allowed, the

same came this day to be advised ; and it appeared, that he had disposed on some solder and meltings in the bottom of the pot, and on some stamps, and a pair of buckles, and some other things of no great value ; and that he had left his service in the third year of his apprenticeship ; and the hiring of journeymen would cost about ten or twelve shillings a-week ; and no maltreatment was proven against the master, but that he had given him a box on the ear when he sticked his work, or staid out late.

Against this probation, it was OBJECTED, for the apprentice and his father,—That the damage could extend no farther than the particulars proven embezzled, which were but small ; and it was not proven they were the master's ; and what hindered but they might be the apprentice's own ? And, though he ought not to carry on a covered trade, to his master's prejudice, yet nobody would call that theft. And the master was the occasion of his being debauched, by keeping another profligate rake in the house, who seduced him ; and the father, being only cautioner, cannot be liable till the son be first discussed. And he was at small loss by his running away, for it made room for his taking home another apprentice ; so he had no need to hire journeymen.

ANSWERED,—That, in these clandestine domestic thefts, it was impossible for him to prove every particular he had abstracted. But the Lords' practice was, where some were pointed at and condescended upon in the probation, to give the master his oath *in litem* for the rest of the kinds and species he wanted, in supplement of the probation ; as was found, 7th November 1684, *Foster against his Apprentice*, observed by President Newton. And his getting a new apprentice did not make up his loss ; for they are incapable to do any effectual service for the first year or two. And the father was bound as surety and full debtor ; neither had the son any estate to discuss.

Some of the Lords were for the master's giving in a more special condescendence of the damage. But, at last, they agreed to modify a sum in gross for the whole, and decerned for £500 Scots in all, including the £40 of penalty in the indentures.

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1708. July 9. ANNE PATON *against* ALEXANDER LEITH of BALSCHIRY.

ANNE Paton, relict of Andrew Logie of Lonehead, and Alexander Leith of Balschiry, having pursued mutual riots before the late Privy Council ; and it being remitted to a committee to hear the parties ; and finding that the best way to settle all their differences, was, that Mr Leith should buy her liferent ; and both parties having submitted to the Lords of the said committee, they, after hearing, decerned her to convey her jointure to him, with absolute warrandice, on his paying her 2700 merks, as its value at seven years' purchase. Thereafter, on a representation that it was hard to oblige her in absolute warrandice, there is a second decreet-arbitral drawn up, obliging her only to give warrandice from fact and deed ; and she having charged on this second decreet-arbitral, he suspends on this ground, That the committee, as arbitrators, were *functi* and ex-auctorate by the first decreet emitted by them ; and had no power to alter the same by pronouncing a second ; and he was willing to obtemper the first. Besides, the second was, *ipso jure*, null, not being signed by the major part ; in so