

Many persons are of the opinion that this last charter in 1636, has done the town much more hurt than good, because it has either cut them off expressly from sundry privileges comprehended in their ancient infeftments, or prejudged them thereof, in so far as they are altogether omitted in this. I shall instance only one. Craig in *Dieg. de Regalibus*, page 117, tells, that the town of Edinburgh, by a special privilege, are indulged the escheat of all condemned within their burgh and liberties for slaughter; and *idem*, page 121, tells they have the power of having and retaining their own fisk; yet by the charter, 1636, the escheats of all persons condemned within the town are specially reserved to the king, and the town for ever secluded therefrom.

It was sore against the town's heart and will that they altered their former charter, but they were forced to it. See more of the town of Edinburgh's charter, *alibi*. (*Vide* Balfour's practiques. *Tit. of Burrows*, cap. 20.) From the council books of the town of Edinburgh in 1629, &c. I find they had procured a charter in 1603, with many strange clauses and privileges; *videlicet*, right of regality, admiralty, right of the north castlebank, as well as the south; and very prejudicial to the gentlemen of West Lothian; which they were * * * * *

Advocates' MS. No. 322, folio 129.

1672. *February 9.* The PROCURATOR FISCAL OF AIR *against* _____.

THE Sheriff-clerk of the Sheriffdom of Air being indebted to a gentlewoman, liferentrix of some lands within the said Sheriffdom, the sum of L.40 Sterling; that he may get an apparent ground of compensation, (for the act gives the fines of all within heritors to the respective courts, who shall see to the execution of the acts;) he causes the Procurator-fiscal pursue her before the Sheriff court, upon the 7th act of Parliament, made in anno 1670 for tinsel of the eighth part of her liferent; and that for her withdrawing and absenting herself from her parish church, by the space of three Sabbath days together, for several times, so that an eighth was *toties quoties* due; and in absence, procures a decret against her. This decret was suspended on thir two reasons, *1mo*, That the act means only for wilful staying away, and not of every withdrawing; and so the decret was null, in so far as it was not proven therein that her separation was through non-conformity: likeas, she offered her to prove *causam maxime sonticam absentiae, videlicet* sickness. *2do*, Though the act 1670, requires no more for incurring the fines thereby imposed, but only unnecessary absence for the space of the three Lord's days together; yet the first act in 1663 (which must regulate the act 1670, and interpret it in so far as it is silent or doth not abrogate it *per expressum*,) requires (and that most rationally) that before any one be stated as guilty of that act, they must first be admonished by the minister, in presence of two sufficient witnesses, and that must be so attested by him: now *ita est*, this method (which seems to be Christ's own, first admonish thy brother in secret; if that prevail not, then before the elders; if he still remain obstinate, then *dic ecclesiae*;) was not used with her: *ergo*, &c.

The charge, in my weak judgement, ought to be suspended *simpliciter*.

Advocates' MS. No. 323, folio 129.