

should be taken thereon, it carried Spango's. But being taken *ex officio*, they would not hold it as a full probation, but ordained him also, on a diligence, to recover Francis Kinloch's books, if any thing of this was stated there.

*Vol. I. page 555.*

1693. *February 8.* THOMAS RANKEILLAR and MICHAEL GEDDY *against* The MAGISTRATES of St. Andrews.

THOMAS RANKEILLAR and Michael Geddy, skippers in St. Andrews, against the Magistrates thereof. The Lords found the pursuers had sufficient interest to lift the money; but considered first if there was any necessary cause for calling for it at this time; and therefore ordained them to condescend why they did not think it sufficiently secured in the town of St. Andrews hands; and if they should uplift it, then ordained them to re-employ it again, and not to break the stock; but discerned them to get the bygone annualrents.

It was PLED in this cause,—That a society and incorporation could not subsist in fewer than three, and that here there were only two skippers; and so the corporation of the seamen of that town being dissolved, this sum either fell as caduciary to the fisk, or returned to the city within which the decayed incorporation had acquired that fund.

But the Lords did not regard this subtlety, for the rest of the seamen there concurred with thir pursuers.

*Vol. I. page 556.*

1692 and 1693. HEW WALLACE of Ingliston *against* LORD FORRESTER.

1692. *November 30.*—HEW WALLACE of Ingliston against my Lord Forrester. The Lords did not incline, by the depositions of witnesses, to make up the tenor of interlocutors amissing or abstracted, but rather to hear them upon the material grounds of justice which may induce the Lords to renew them; and, therefore, *ante omnia*, ordained Thomas Baillie to fit his accounts during the years he was factor on the estate of Corstorphin, and my Lord Forrester to give in his objections against the same. And if by the balance, Thomas was found debtor, the Lords would, at advising, consider if Hew Wallace should be liable for him *subsidiarie*. And as to the other interlocutor, of Mrs. Martha Temple's annuity, depending on Hew Wallace's right, it being alleged, that since November 1689, the present Lords of Session had found the same; they ordained the Lord Ordinary to try that, and if it was not so, to hear them on the grounds of law why it should not subsist as a separate debt alone. *Vol. I. page 525.*

*December 14.*—Hugh Wallace of Ingliston against the Lord Forrester, mentioned 30th November last. It was ALLEGED,—The commissary's decret was more than a decret in absence; seeing the passive titles were proven, not by cir-