

1744. December 11. HERDMAN *against* YOUNG.

WILLIAM HERDMAN, merchant in Stonehyve, in name, and by commission of some of the inhabitants and feuars there, raised a declarator of several immunities and privileges alleged due to the place, against the York-Buildings Company their superiors; and into this summons, he threw a conclusion, narrating several acts of injustice and oppression as committed by John Young of Stank, in his capacity of town-clerk, and of sheriff-substitute of the shire of Kincardine, and clerk to the Sheriff and Justice of Peace Courts. Mr Young complained of these articles, as injurious to him, and inserted in the summons by Mr Herdman, without any warrant, although, after raising the process, he had obtained from two of the feuars of Stonehyve, a commission to prosecute Mr Young, and another from certain weavers and brewers in the county, to pursue him for injuries to the weavers and brewers in general.

The articles complained of were, That he had extorted a sum of money from Alexander Straiton, stamp-master in Stonehyve; That being clerk to the Justices of Peace, he had obtained his own servant to be named procurator-fiscal, and had caused him to summon the whole weavers and brewers in the county, from whom he had taken half-a-crown, or some such sum, to redeem them from process; That being sheriff-substitute, he had instigated processes, which he himself managed as procurator, and determined as judge;—and it was noticed, as an aggravation of the calumny, that the libel was printed, and dispersed in the country.

THE LORDS thought the inhabitants of the county could only pursue, each for his own injury; and they also thought the whole articles improper to be inserted in a declarator of the town's right.

They found the articles complained of were incompetent, injurious, and defamatory to John Young; and therefore ordained the same to be deleted and expunged out of the libel; and fined and amerced Herdman the pursuer in the sum of L. 10 Sterling for the use of the poor; and found him liable to the defender John Young in the whole expenses of process hitherto incurred.

Reporter, *Lord Elchies.* For the Complainer, *Burnet.* Alt. *Lockhart.* Clerk, *Justice.*

*D. Falconer, v. 1. p. 23.*

No 78.

Articles of complaint insisted on against a person, without warrant from those whose names were used as complainers, and improperly thrown into a summons raised in their names for another purpose, for which they had given warrant, were found injurious.

1748. July 15. CAMPBELL *against* BARRY.

No 79.

ONE having sold a certain number of cows to another, and got his bill for the price, they were allowed to remain a few days in the seller's inclosures; mean-