

tor's price, as being above the Sheriff's fiars. *Answered*, Such rigorous specialities ought not to be regarded; but the common standard of the fiars must be the rule. THE LORDS would not precisely tie the posterior creditors to accept of the fiars, but allowed them to elect either the price actually received by Polton and Wright, or the fiars, any of the two they found highest.

No 3.

On the 24th June 1698, the LORDS advised this point; found them liable to count for a rental, because they had put in sub-factors, who were tied to diligence, but with deduction of what the common debtor had intromitted with, otherwise one creditor might collude with the bankrupt's possession, to the prejudice of the rest:

Fol. Dic. v. 1. p. 311. Fountainhall, v. 1. p. 799.

1734. *January.* HENDERSON *against* SIR ROBERT HENDERSON of Fordel.

No 4.

IN a case of the nature of that of Lady Samford against the Laird, No 2. p. 4413, the LORDS found the current prices must be the rule, and that the fiars are only to be laid hold upon when no other proof can be had of the real value. See APPENDIX.

Fol. Dic. v. 1. p. 311.

1760. *August 5.*

The TREASURER of Aberdeen, *against* Mr JOHN GORDON, and other FEUERS of the lands of Elsick.

THE TOWN of Aberdeen having purchased the lands of Elsick in the county of Kincardine, feued out the same in parcels, for payment of a duty consisting chiefly of meal, to the amount in whole of 188 bolls, to be converted yearly at the rate of the fiars of the county.

The fiars of the county of Kincardine for the year 1759, were struck by an inquest, in presence of the Sheriff, on the 21st February 1760, and thereby the fiar-price of meal was fixed at L. 4 : 16s. Scots per boll.

The feuers of Elsick presented a bill of suspension of their obligation to pay their feu-duties for that crop, on these grounds: *1mo*, The fiar-price is extravagantly high. The greatest price given for any farm-meal of that crop, can be proved not to have exceeded L. 4, Whitsunday payment; and the suspenders are willing to pay at that rate, though it can also be proved, that the current price of the best meal was only L. 3 : 10s. Scots: And the end of striking fiars is to ascertain the current medium price of grain. *2do*, The suspenders only became bound to pay by the fiars, supposing them to be struck in a just and regular manner; but these fiars were not struck according to the act of se-

No 5.

Objections to the fiars of a county, that they were exorbitantly high; that none of the jury were landed men; and that they examined no witnesses, were repelled. The objectors being bound to pay at the rate of the fiars, were obliged to account accordingly, in whatever manner the fiars were struck. They

No 5.
might bring
an action of
damages a-
gainst the
Sheriff and
jury, or a re-
duction of
the fiars.

derunt 21st December 1723; for, it does not appear from the extract of the proceedings in striking the fiars, that the jury was summoned before the 20th of February, or that they were at all cited. 3^{to}, From the same extract it appears, that more than the majority of the jury were composed of farmers, millers, or maltmen, who might have an interest to raise the price of the commodity in which they dealt; and it can be proved, that not one of them is a proprietor of land, though the act expressly appoints, that the majority shall consist of landed men. 4^{to}, The jury did not examine a single witness concerning the prices of victual; and, although the act empowers them to return their verdict, either upon evidence adduced before them, or upon their own proper knowledge; yet it specially appoints, that witnesses shall be adduced: And it must be concluded, either that this jury were themselves extremely ignorant of the matter, or that they wilfully erred. And lastly, It does not appear that the jury were put upon oath.

Answered for the Town-Treasurer, charger, 1^{mo}, Supposing these fiars were fixed at too high a rate, which is not admitted, the suspenders are nevertheless bound by their contract to take their hazard thereof. The Town of Aberdeen is not obliged to answer for that, or for any irregularities that may have been committed in striking the fiars. If the suspenders think themselves thereby aggrieved, their proper remedy is by an action of damages against the Sheriff and jury, or a process of reduction of the fiars. 2^{do}, The neglect of citing the jury before the 20th of February, is not instructed, and the contrary must be presumed to be true. 3^{to}, Nor is it verified, that the majority were not landed men, though the chargers confess, they believe the greater part were only farmers and country-men; but this branch of the act, as to the majority being heritors, is gone into disuse, or rather never was in use in many counties. 4^{to}, The jury having a discretionary power, to determine on the evidence of witnesses, or their own proper knowledge, the charger is not obliged to inquire which method they followed. And, 5^{to}, The jury's not being sworn is not proved; and every thing must be presumed to be *rite et sollemniter actum*.

Replied, The suspenders only seek redress so far as their own interest is affected; and it is certainly competent for the Lords to try their objections in a suspension *ad hunc effectum*, without their calling, as defenders in a reduction or process of damages, others with whom the suspenders have no inclination to dispute for the public interest.

“THE LORDS refused the bill of suspension.”

For the Charger, *Burnett*.

Alt. Rac.

D. R.

Fol. Dic. v. 3. p. 219. Fac. Col. No 244. p. 445.