

. Gosford reports this case :

1673. *June 27.*—IN a suspension of a decret of the Lord Lyon, King at Arms, against Fleming, who was cautioner for a messenger, who had malversed in his office ; for payment, not only of the penalty of the bond, but of a certain sum of damage and interest to the party ; upon this reason, that the Lyon was not Judge competent as to damage and interest ; but only as to the case of malversation, he might deprive the messenger, and fine him and his cautioners in the penalty of the bond, which ordinarily does not exceed 500 merks. It was *answered*, that by the 46th act of King James VI. Parl. II. the Lyons have power to hold courts upon all officers of arms, and their cautioners, and to punish them in case they malverse in their office ; and all civil Magistrates are to concur with him to see his acts put in execution, which necessarily implies that they may cognosce of the prejudice the parties sustain, who employ them, likeas they have been in use to decide for damage sustained. THE LORDS, after inspection of the books, and registers of their decreets, bearing only that they had been in use to decern some small sum for expenses of plea, did find the reason of suspension relevant ; seeing the damage of the creditor amounting to no less than the whole sums of money contained in the bonds ; which may be of a great value, the liquidation thereof being the ground of a civil pursuit, should pertain to the civil judge ; whereas the Lyon's office is to punish for a crime.

Gosford, MS. No 602: p. 345.

1668. *February 13.*

ANDREW GREIRSON *against* PATRICK M'ILROY

ANDREW GREIRSON having employed Patrick M'Ilroy messenger, to use inhibition and arrestment against Sir James M'Dougal of Garthland, and having failed to make use thereof in time before he dispoed, did pursue him and — Houston of Cutreoch his cautioner, before the Lord Lyon, whereupon the said Patrick and his cautioner were decerned to make payment of 500 merks of penalty, and of the damage and interest sustained by the pursuer, to the value of the sums, whereupon the inhibition and arrestment should have been used. The messenger and his cautioner raise suspension and reduction, and insist upon this reason, that the decret is null, as a *non suo judice*, because albeit the Lyon be authorised by act of Parliament 1587, cap. 46. to take caution for messengers' discharge of their office, and upon default may summon messengers and their cautioners, and may deprive the messengers, and decern them and their cautioners in the pains and penalty for which they became cautioners, yet the Lyon is not warranted thereby to determine the damage of parties, through default of messengers, which may be of the greatest

No 357.

The Lyon competent to judge of deprivation of messengers, and the penalties in their bonds of caution ; but incompetent as to the damage of parties.

No 357.

moment and intricacy ; and would be of dangerous consequence to give the Lyon such jurisdiction over all the kingdom. The charger *answered*, that the messenger was unquestionably liable to the Lyon's jurisdiction, and that both he and the cautioner had made themselves liable thereto, by enacting themselves in the Lyon's books, and granting bond registerable therein ; and it would be great inconvenience to pursue messengers before the Lyon only for deprivation and penalty, and have need of another process for damage, and interest ; and that the Lyon has been accustomed to discern cautioners so before.

THE LORDS found the reason of reduction relevant, and turned the decret into a libel, but sustained the decret as to the penalty of 500 merks, in which the messenger was enacted, but not for the damage and interest, neither against the messenger nor cautioner.

Fol. Dic. v. 1. p. 509. Stair, v. 1. p. 522.

1765. January 21.

JOHN CAMPBELL-HOOK, Lyon King at Arms, and his Depute, *against* JOHN COPLAND and JOHN M'COLL.

No 358.

The Lyon by his decree deprived several messengers *de plano* ; upon the following grounds: *1mo*, That they had not attended the head-court ; *2do*, That they had not paid their bygone annuities ; *3tio*, That they had not compeared, in order to answer any complaint which might have been preferred against them, and to instruct that their cautioners were alive and solvent. The Lords found the decree irregular and void.

THE statute 1587, c. 46. appoints Lyon King at Arms to hold two courts, upon the 6th of May and 6th of November, yearly, ' for all complaintes to be maid to him, upon the default of officers in time cumming.'

For many years these courts had been little attended to. But, in 1763, Mr Campbell-Hook, Lyon King at Arms, resolved to hold a court, and intimated his resolution in the public newspapers, requiring all the messengers in Scotland to attend, for inspection of their books of executions, for inquiring into the situation of their cautioners, and for payment of their annual dues, being ten merks to the Lyon himself, and about half that sum to his clerk ; and *that* under pain of deprivation.

Many of the messengers attended at this court ; others did not ; and the Lyon deprived about fifty of them *de plano*, upon the following grounds ; *1mo*, That they had not attended the head-court ; *2do*, That they had not paid their bygone annuities ; *3tio*, That they had not compeared, in order to answer any complaint which might have been preferred against them, and to instruct that their cautioners were alive and solvent.

Most of these deprived messengers were re-admitted on their application ; but two of them continued to act as formerly without applying ; and, being charged on the decree, suspended it as contrary to law.

Pleaded for the Chargers ; The precise limits of the jurisdiction of almost every court are fixed, not by statute, but by custom. The Lyon-Court appears even to have been *introduced* in that manner. The first statute which mentions it is 1587, c. 46. It proceeds upon the recital, that a great number of messengers had entered into that office, in a confused and uncertain manner. It