

table justiciary, and not a regality. Yet Sir George Mackenzie, in his *Criminals, tit. Of the Power of Regalities, num. 4*, thinks they may be erected within heritable sheriffships: And, *tit. Of the Sheriff's Jurisdiction*, he cites an unprinted Act of Parliament, in 1504, declaring, The King may erect, unite, or divide sheriffdoms, without authority of Parliament. But this may be understood of such sheriffships as are not heritable, but at the King's nomination and disposal. And what is urged by the lords of regalities against heritable sheriffships, that they diminish the King's power and the subjects' dependence upon him, returns with greater force against the regalities themselves. So that it is acting Samson's part, who, providing he destroy the Philistines, is content to be buried in the ruins with them. And, laying down this position, That the King may erect any man's lands into a regality, then the whole shire may be turned into regalities, that the heritable Sheriff shall have nothing to exercise his jurisdiction in, but *vacua se jactet in aula*; and the giving such privative jurisdictions is giving away the King's casualties in great, contrary to the Act of Parliament. And, in all the revocations of our Princes, regalities are always mentioned as one of the grievances; and in the Highlands they were yet more dangerous.

The Lords did not enter to advise it this day.

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*November 26.*—The famous cause betwixt Westfield and Grant, mentioned November 12, 1697, was advised. The Lords seemed to be clear that the heritable Sheriff could not simply reduce the Laird of Grant's regality; because the concession of a regality contains many things which the Sheriff could lay no manner of claim to,—such as the having a chapel and chancery, the right of the single escheat, &c.; so that the Sheriff could quarrel it no farther than it interfered with his heritable jurisdiction, and encroached on his property, or he could instruct himself lesed thereby.

It was moved by some of the Lords, That, being a matter of state and government, wherein there happened a clashing and contradiction between the laws and the received general practice, it might be most convenient to remit it to the decision and determination of the next session of Parliament. To this it was ANSWERED by some others, That the Parliament would think it a strange question to be remitted to them, Whether the King had power to grant a regality, where so many concerned in such jurisdictions had a vote; and that the King likes not to have his power controverted. It was REPLIED,—The question was not simply, Whether the King may grant a regality or not; but, If he can do it to the prejudice of an heritable Sheriff, whose office is a part of his property. And though, at first view, it seems an enlarging the King's prerogative that he may erect regalities at his pleasure, yet, if duly considered, it is a diminution of the royal power to give away jurisdictions and casualties in great: and, to invest a power in the King to hurt his revenue, and give away jewels and pearls out of his Crown, is a noxious power, which every good Prince will desire to want rather than exercise.

The plurality of the Lords carried, That this case should be remitted to the King and Parliament.

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