

party and took their hazard of an assignation to the creditor's right, as being loosed contrary to law. Yet they decided in this case, as is set down, *supra*.

Fol. Dic. v. 2. p. 293. Fountainball, v. 2. p. 109.

1705. July 17.

JOHN Duke of ATHOLE, JAMES Earl of SEAFIELD, and JOHN RICHARDSON, Writer in Edinburgh, *against* The Earl of EGLINTON.

JOHN RICHARDSON having, *in anno* 1696, obtained a gift of the office of Sheriff-Clerk of Renfrew from the Duke of Athole and Earl of Seafield, then Secretaries of State, and having protested for damages against Robert Semple of Fulwood, Sheriff-Depute, for refusing to admit him, and to deliver up the records; he pursued the Earl of Eglinton, Sheriff-Principal, the said Sheriff-Depute, and Robert Alexander, who exercised the clerkship, to receive him to the office, to deliver up the records, and to make payment of the emoluments of the office since the year 1696.

Alleged for the Earl of Eglinton; The Secretaries' gift cannot be regarded, because he, the Earl of Eglinton, as Heritable Sheriff of the shire of Renfrew, hath power to name the Sheriff-Clerk as a pertinent of his office, and hath granted a commission to Robert Alexander, who officiates as clerk.

Answered for the pursuers; Sheriff-Clerkships, as all other offices belonging to the Crown, are at the Secretary's disposal, unless the Heritable Sheriff's charter doth bear a special power to dispose of the clerk's office, which the Earl of Eglinton cannot pretend to be in his. Nor is there any difference as to the question and power of naming clerks, betwixt heritable and temporary-sheriffs; and as the latter cannot nominate without a special grant from the Crown, neither can the former.

THE LORDS found the Secretaries of State have power to nominate Sheriff-Clerks, when the Sheriffs, as in this case, have no such power expressed in their charters or heritable rights: And decerned Richardson to be received in the office, reserving to him action for the bygone profits as accords.

Fol Dic. v. 2. p. 291. Forbes, p. 27.

* * * Fountainhall reports this case :

LORD PRESTONHALL reported the Duke of Athole, Earl of Seafield, and John Richardson, writer in Edinburgh, against the Earl of Eglinton. The Sheriff-clerkship of Renfrew falling vacant in 1696, by the death of Greenlees, the former clerk, John Richardson applies to the Earls of Tillibarden and Seafield, then secretaries of state, and, for onerous causes, obtains a gift from them of the said office; and requires Robert Semple of Fulwood, the Sheriff-depute, to receive him to the office, and deliver him up the records; and, on his refusal, he

No 25.

Sheriff Clerks may be named by the Secretaries of State.

No 25. protested for cost, skaith, and damage; and then raises a process against the Earl of Eglinton, Sheriff-principal, Fulwood, the Sheriff-depute, and Robert Alexander, who exercised as clerk, to hear and see it found and declared, that he has the sole right, and they decerned to admit him, and to pay the bygone profits and emoluments of the place since 1696. *Alleged* for the Earl of Eglinton, That being heritable Sheriff, he had, by virtue of his office, a power to nominate and input a Sheriff-clerk, so the Secretaries' gift was null. *Answered*, The disposing of the offices belonging to the Crown, and particularly that of Sheriff-clerks, appertained to the Secretaries, and not to the Sheriff, unless he had a special power and faculty so to do by his charter, (as the Earl of Rothes, in the heritable Sheriff-ship of Fife has), which my Lord of Eglinton has not. *Replied*, Though it was not *nominatim* expressed in his right, yet it followed in consequence as a part and pertinent of the office. *Duplied*, In this point an heritable and a temporary Sheriff made no difference; and a Sheriff, during life, never pretended to name a clerk; and this very same office had been gifted by the Earls of Murray and Melford, when secretaries, so they were in possession. THE LORDS found that the Earl of Eglinton, not having an express power in his charter to nominate Sheriff-clerks, he had not right to dispose of the said place; but that the same belonged to the Secretaries of State; and therefore ordained Richardson, the pursuer, to be admitted and received to the said office.

Then he insisted in his other conclusions, to have the bygone profits. Against which it was *alleged*, That Robert Alexander, being admitted by a gift from the Earl, and in possession, he was *in bona fide*, ay till the Earl's right was found null and insufficient. *Answered*, The intimation of the pursuer's gift, and instrument of requisition, did certainly put him *in mala fide*. THE LORDS remitted this point to be further heard by the Ordinary. Thomson *contra* Law, No 17. p. 1737.

Fountainhall, v. 2. p. 284.

1710. January 18.

The MAGISTRATES of Montrose *against* Mr ROBERT STRACHAN, Schoolmaster.

No 26.

A Schoolmaster in a Royal Burgh, whose admission bore neither during pleasure nor *ad vitam*, found not to be removeable arbitrarily at the pleasure of the Magistrates.

THE Magistrates of Montrose, by an act of their Town-council the 10th August last, declared, That the said Mr Robert Strachan should not continue their schoolmaster longer than till the term of Martinmas next; which act being intimated, the Magistrates, by another act, the 9th of November, declared his school vacant, and decerned Mr Robert to deliver up the keys to the Magistrates.

He suspended, and *alleged*, That being admitted Schoolmaster simply, and not during pleasure, he had right to enjoy his office *ad vitam aut culpam*; and generally gifts to offices are so understood, when not otherwise expressed; and it were a very great discouragement, for men who are fitted for their employ-