

No 15.

ronous consequence, if one should thus argue : A charge of horning against the superior is equivalent to an infeftment ; therefore, an apprising with a charge cannot be carried but by a special service. The answer would be plain, That though the law, in competition of apprisings among themselves, has given this effect to a charge against the superior, it has not confounded the nature of our rights ; and an apprising with a charge remains still personal, and is carried by a general service.

THE LORDS found, That the widow has right to her terce, or third of the lands wherein her husband died infeft : and preferred her for the said terce, to the hail other creditors adjudgers.' (See-TERGE.)

Rem. Dec. v. I. No 56. p. 108.

1737. July 22. JAMES BLAIR and JOHN NAIRN *against* ROBERT FREEBAIRN.

No 16.

The office of King's printer granted to a person, his heirs and assignees, found to be adjudgeable.

THE question betwixt these parties was, Whether or not a gift from the Crown to the said Robert Freebairn, his heirs, assignees, and substitutes, of being the King's sole printer for 41 years, was adjudgeable ? The *arguments* urged for the defender were, That every debtor ought to dispone in satisfaction of a just debt, and, if he refused, the law would do it for him ; but, where he could not, the law cannot interpose. It was further *pleaded*, in general, That, if a right may be assignable, but not without the consent of a third party, no creditor, until such consent is obtained, can pretend to adjudge, under colour that his debtor unjustly refuses to assign.

It was likewise *argued* : That there are several offices, where a *delectus personæ* is absolutely necessary ; and, to intrust the officer with chusing his successor in such offices, would be dangerous to the constitution : *e. g.* To suppose a bench of judges, who had right to their offices by dispositions or adjudications, would be absurd. It is true, there is no statute concerning this matter ; but, where personal qualifications are necessary, incroachments against this rule are secured by the law of common sense and public utility. And, if a grant of them were given to assignees, it is believed, such a clause would have no effect. Now, to apply these things to the case in hand, it may not be improper to observe, that, although monopolies are reckoned illegal, and a great grievance to the subject, yet the necessity of government, and the good of the nation, forced a monopoly to the King's printer ; for, if irreligious and heretical persons had the power of publishing religious books, seeds of schisms and heresies would, with great ease, be sown, to the subversion of religion ; or, if seditious persons had a power of printing, for acts of Parliament, what they thought fit, dangerous consequences might follow ; which made it necessary, that the sole right of printing should be in one appointed by the Crown : So that, from the nature and circumstances of this office, it cannot be adjudged. Besides, if this is allowed, the consequence would be, that a taylor would become the King's smith, and *vice versa* ; though both offices were.

given, (or are supposed to be given,) to persons who are in a condition properly to discharge the duty of the office, and which is supposed here, as appears from the preamble to this grant.

It is a separate question, Whether or not, if a salary were annexed to an office, the salary might be adjudged; as the profits which arise to the King's printer, might, by diligence, be carried off by his creditors; but the office itself can never be conveyed in that manner. Indeed, a King's printer may enter into articles of agreement concerning the profits, which he may be compelled to stand to; but he can no more be denuded of his office by adjudication, or disposition, than a burgher can of burghership, or any other person of the freedom of an incorporation.

And as the freedom of a burgh, or of an incorporation, cannot be conferred without the consent of the community or incorporation; so none can be King's printer without the consent of the Sovereign. Nor is it any objection, that this grant is to assignees; because, in consistence with the rest of the gift, they cannot extend further than substitutes, who are likewise mentioned, and for whom the defender is answerable. But, even supposing assignees did mean something different from substitutes, it would reach no farther than assignments, with consent of the Crown: For, to suppose the defender could dubb every one he pleased with being King's printer, and put it in the power of a street-cadie to print Bibles and acts of Parliament, can never be supposed to have been the meaning of the Crown.

Answered for the pursuers: There is no right whatsoever, which is *in patrimonio* and descends to heirs, that can be withholden from creditors, as they have a right to affect every such subject belonging to their debtor, whether it goes to assignees or not: But here the grant is expressly conceived to assignees: Therefore, it is odd to plead, it cannot be assigned, without a new consent from the Crown, when, by such construction, there could be no meaning at all in adding assignees; seeing, without that addition, an assignment, founded on such consent, would be valid. At the same time, it can be no doubt, there are many offices which would be monstrous to suppose transmissible, either to heirs or assignees; but where an office is granted to these, or either of them, it is a proof that personal skill and fitness was not the motive of making such a grant, else it would never have been communicable to persons unknown to the granter. Such a gift partakes more of the nature of a right and privilege, than of an office of trust; and this is the case of grants which do not necessarily require to be exercised by the patentee himself, but may be sufficiently executed by others.

The defender's anxiety to prevent the printing of heretical or seditious books, is unnecessary in the present question, because such abuse is not to be supposed; and, if it were, it could not be guarded against by excluding assignees or adjudgers, as the first patentee might be guilty of such an abuse as well as an adjudger. Nor is it a good answer, That he is entrusted by the Crown; for, besides that one may counteract his trust, it is idle to talk of that, where the grant is to heirs.

No 16. who must be unknown to the granter, and consequently cannot be the objects of a particular *delectus* or trust reposed in them.

The instance of the offices of the King's taylor or smith do not apply; seeing, if these were granted to assignees, they behoved likewise to fall to adjudgers. Neither is the case of a burghers, or member of an incorporation, to the point, unless it could be shown, that such privileges were transferrable to assignees: At any rate, it is *jus tertii* for the defender to make this objection to his own creditors.

THE LORDS found the office of King's printer adjudgeable.

Fol. Dic. v. 3. p. 9. G. Home, No 68. p. 116.

1747. July 10. SIR ALEXANDER COCKBURN *against* CREDITORS of Langton.

No 17.
The office of principal Usher to the King, found to be adjudgeable.

THE office of principal Usher to the King, was granted heritably to the predecessor of Sir Alexander Cockburn of Langton. What was the precise date of the original grant, does not with certainty appear; but there is, in the records, a grant by King Robert the II. ratified in Parliament, to *Alexander de Cockburn*, therein designed, '*dilecto nostro armigero.*' This grant disposes to him the three baronies of Bolton, Caridden, and Langton, in free forestry and warren, with the burgh of barony; and then adds, '*Itaque quod dictus Alexander, hæredes vel assignati sui intersit vel intersint tres sectas capitales, viz. Sectam itineris justiciarii tent. inter vicecomitatum de Berwick super Tuedam, sectam itineris justiciarii tent. apud Edinburgh, et Parliamentum nostrum tent. apud Sconam: et quod dictus Alexander vel hæredes sint principales ostiarii nostri ad nostra Parliamenta, generalia concilia, et festa, capiendo de nobis et successoribus nostris per dictum tempus, liberationem pro duobus armigeris, duobus arcutenentibus, cum gladiferis et equis pertinentibus eisdem.*' And the charter contains a *reddendo* of a pair of gilded spurs of blanch farm, *pro omni alio onere.* From the 1647, downward, there is a connected progress of grants from the crown, of the said office, to Sir Alexander's predecessors, and their heirs-male; with this variation, by charter under the great seal in the 1674, that there is a fee, or yearly pension of L. 250 Sterling, annexed to the office, in place of the livery, or maintenance formerly given to principal usher's attendants, to his esquires, archers, sword-bearers, and his and their horses, and their grooms.

The creditors of Langton, who had adjudged the office, as well as the land estate, having brought a ranking and sale of the estate, comprehending the said heritable office, and the fees thereof, Sir Alexander, apparent heir male of the family, being advised that this office was a right annexed to the person, and not to the estate, and consequently not transmissible by voluntary conveyance, nor by legal diligence, brought a declarator to have it found and declared, 'That this office is not a patrimonial estate, capable to be aliened from the family, or to