

No 342. by a charter of *novo-damus*; the LORDS found this grant did not fall under the sanction of the statute 1455, forbidding the grants of heritable offices.

*Fol. Dic. v. 3. p. 363. D Falconer, v. I. No 232. p. 319.*

1748. February 5.

The DUTCHESS of GORDON *against* The KING'S ADVOCATE.

No 243.

Recompence due for a grant of bailiary over the grantee's lands, lying in a churgn regality, on which there had been no possession for 40 years.

THE Dutchess Dowager of Gordon claimed the Bailiary of Regality over her own lands of Prestonhall, in virtue of a charter 1688 from the Archbishop of St Andrew's, of the lands, with the office, described as lying within the regality of St Andrew's, proceeding upon a resignation.

*Objected*, That there had been no exercise of jurisdiction upon this grant of Bailiary.

It was considered, That the grant was to a proprietor over only his own lands; so that there were no heritors who could have prescribed an immunity. And the only effect of the Bailiary being lost, would be the falling back of the estate under the general jurisdiction of the Regality of St Andrew's; which could not be pretended by the Lord of Regality in this case, or the like, where the lands and office were contained in one grant for one general *reddendo*, which the Lords had constantly accepted for both.

THE LORDS therefore sustained the claim.

*Fol. Dic. v. 3. p. 364. D. Falconer, v. I. No 236. p. 321.*

1748. February 12. BAILIE and MONRO *against* The KING'S ADVOCATE.

No 344.

No recompence found due to the Bailie and Clerk for life of a regality, by grant from the fiar, who had a gift of the liferenter's escheat, but was himself attainted after 11th Nov. 1746, for treasons committed before that time.

EVAN BAILIE, as Bailie, and Alexander Monro, Clerk for life of the Regality of Lovat, by commission, 21st February 1738, from the late Lord Lovat, claimed a recompence for their respective offices.

*Objected*, The statute makes no provision in favour of Bailies for life.

*2dly*, To both claims, Lord Lovat's title to the estate of Lovat was made up of a gift of the liferent escheat of Alexander M'Kenzie of Fraserdale, in whom was vested the liferent of the said estate and Regality, and of legal diligence, whereby he had denuded Hugh Fraser, the fiar thereof; but as the liferenter was alive at the date of the commission, and still so, he could not grant any in virtue of the right of fee, and the jurisdiction did not fall under liferent escheat, nor, if it did, could be understood to be comprehended under the general gift, which did not mention it; but it was in the Crown either as not gifted, or as having remained with Fraserdale after the falling of his escheat, until it was forfeited by his attainder for the rebellion in 1715.

*Answered*, Lord Lovat had in him the full right of liferent and fee, consequently the whole estate; and the jurisdiction, which was a quality of the right to the lands, fell by the escheat, whereby the liferent of the estate itself was lost.

No 344.

*Objected*, 3dly, By Lord Lovat's forfeiture the regality was suppressed, and with it the offices of the claimants, without the aid of the act of Parliament for abolishing jurisdictions.

*Answered*, That regalities were not extinguished by forfeiture, but vested in the Crown in virtue of the act made for that purpose; so that were it not for the statute abolishing jurisdictions, the claimants' offices would subsist, and therefore they were entitled to a compensation; especially as it could not be denied they were in possession on the 11th of November 1746, the day mentioned in the statute, as Lord Lovat was not then attainted.

*Replied*, That the attainder drew back to a time before the 11th of November 1746, so the claimants were not then in possession.

THE LORDS found them not entitled to a recompence.

*Fol. Dic. v. 3. p. 364. D. Falconer, v. 1. No 243. p. 329.*

1748. February 18. LORD DUN against The KING'S ADVOCATE.

THE LORD DUN claimed a recompence for the constabulary of Montrose.

*Objected*, The claimant has conveyed his whole jurisdiction, by a perpetual deputation to the Magistrates of Montrose, expressly renouncing the power of judging, either by himself, or by sitting with them, except when he shall be desired to assist them in the determination of difficult and arduous causes, so that there remains nothing with him; and the jurisdiction is saved to the town by the statute; or if it be not, they have not claimed.

*Answered*, The claimant is constable, and the Magistrates only his deputies, and as such expressly bound to fence their courts, and issue precepts in his name; so that if the principal jurisdiction is abolished, it is impossible the deputation can subsist. The Magistrates have lost what share of the recompence might have belonged to them by not claiming, the consequence whereof ought to be, that the Lord Dun should be considered as having the full right in him, for the Advocate cannot plead upon the right of a third party; but supposing the Magistrates had claimed, or it should be found the deputation is saved to them, the claimant has still a valuable right, as he might act in case of a vacancy in the Magistracy.

THE LORDS found the claimant entitled to a recompence.

*Fol. Dic. v. 3. p. 363. D. Falconer, v. 1. No 244. p. 330.*

No 345.

Recompence found due for a constabulary, of which a perpetual deputation had been granted to a town, exclusive of the principal's power of judging.