

No 18.

This privilege of superintending the elections of the town of Wick, was adjudged from the family of Caithness, with the land-estate; and first, the Earl of Breadalbane, and thereafter Sinclair of Ulbster in the Earl's right, got into possession of this privilege, during the time that the affairs of the family of Caithness were in disorder. A declarator, at the instance of some of the burgeses of the town, to regulate their elections, according to the form prescribed in the said charter, furnished the present Earl of Caithness an opportunity to appear for his interest, and to dispute Ulbster's right to this privilege. He contended, that it is purely personal, and not alienable more than his peerage, whether by a voluntary or judicial deed: The privileges attending peerage, a seat in Parliament, and exemption from personal execution, are not alienable: A right of burgeship is not alienable, nor the privileges of a royal burough: The East India Company cannot alienate their privileges, nor any other company erected with exclusive privileges. The reason is the same in all, that these privileges are personal, and for that very reason not alienable; yet some of the privileges mentioned are attended with pecuniary advantages, which the privilege under consideration, neither is nor can be. *2do*, The Earl of Caithness can exercise this privilege in the state of apparençy; it does not subject the heir to the passive title, more than assuming the dignity, or bearing the family arms. It is therefore not patrimonial, to be carried by adjudication.

*Answered* for Sinclair of Ulbster: By the constitution of our law originally many things were exempted from commerce, heritable offices, jurisdictions, and even land itself, though the most natural object of commerce. But now we lean to the other side, that all rights are alienable, unless the contrary be specified in the grant. It is indisputable, that personal privileges conceived to heirs and assignees are alienable; which is the present case; because this privilege is given to the Earl of Caithness, his heirs and successors: And when a patronage, an heritable office, an heritable jurisdiction, are alienable, there can be little doubt that the privilege under consideration is also alienable.

'THE LORDS first found this privilege not alienable; thereafter, that it is alienable.' (See PERSONAL and TRANSMISSIBLE.)

*Rem. Dec. v. 2. No 104. p. 199.*

1755. November 28.

GEORGE OUGHTERLONY of London, Merchant, *against* The EARL of SELKIRK.

No 19.  
An adjudication of the lands, found to comprehend the mines.

SIR ALEXANDER MURRAY of Stenhope, obtained a charter of mines from the CROWN. It recited the 12th unprinted act, Parl. 12. Ja. VI. 1592, and granted to Sir Alexander, his heirs and assignees, all the mines found, or to be found, in his lands in the county of Peebles.

After the date of this charter, the creditors of Sir Alexander did diligence against his estate. The Earl of Selkirk adjudged the lands; Oughterlony adjudged both lands and mines.

In a competition of the creditors of Stenhope, the question occurred, Whether the mines were carried by the adjudication which mentioned the lands only?

No 19.

*Pleaded* for Oughterlony, who adjudged both the lands and the mines: He who has right to lands, may, in terms of the act 1592, demand a charter of mines. This faculty of demanding will be carried by an adjudication of lands: But after this faculty has been exercised, and a charter of mines obtained, the lands and the mines are held under different titles, and must be separately adjudged. Thus an adjudication of lands may carry the right which the proprietor has of purchasing the teinds of those lands; but such adjudication will not carry the teinds already belonging to the proprietor of the lands.

*Pleaded* for the Earl of Selkirk, who adjudged the lands only: By the act 1592, the proprietor of lands may demand a charter of mines, and he alone may work them; he cannot work them after the lands have been adjudged from him. Unless, therefore, the adjudication of lands carry the mines, the grant of the mines must become ineffectual, and the intention of the act 1592 be frustrated.

THE LORDS found, That the adjudication of the lands comprehends the mines.

Reporter, *Strichen.* For Oughterlony, *Sir D. Dalrymple & Lockhart.* Alt. *Miller & Brown.*  
Clerk, *Justice.*

*Fol. Dic. v. 3. p. 9. Fac. Col. No 167. p. 249.*

*Dalrymple.*

1759. December 7. MARION WILSON *against* ALEXANDER FALCONER.

ALEXANDER FALCONER, keeper of the register of sasines for the shire of Berwick, in which office he had a power to name a deputy, being debtor to the pursuer, she raised an action of adjudication of this office.

*Pleaded* for Falconer, The office is not adjudgeable; because it is not a patrimonial estate. The defender has only his commission during life, or so long as he executes the office properly; it does not go to heirs; and it cannot be assigned: But an adjudication is a legal assignation.

In the nomination of a person to this office, there is a *dilectus persona*. Diligence and fidelity are requisite in the execution of it, for which there can be no security, if it may be attached indiscriminately by any creditor of the officer. The Crown has invested him with certain powers. His register, and extracts from it, bear faith in all courts. These powers he may commit to a deputy; but no court has a power to transfer them to creditors. Some few instances may indeed be given, where offices of trust have been adjudged; such as that of sheriff, usher, and printer to the King, &c. But the principles on which these decisions were founded, are not void of difficulty. Besides, these were cases very different.

No 20.

The office of keeper of the register of sasines, granted during life, with power to name a deputy, found not to be adjudgeable.