

# APPENDIX.

## PART I.

### COMMISSIONERS OF SUPPLY.

1771. February 20.

RODERICK MACKENZIE, of Scotsburn, *against* KENNETH MACKENZIE, and Others, Commissioners of Supply for the County of Ross.

A COMPETITION and contested election for the office of collector of the cess for the county of Ross having ensued betwixt Roderick and Kenneth Mackenzie, Roderick brought an action, concluding to have it declared that the proceedings at the meeting, when Kenneth Mackenzie had been elected, ought to be reduced; that it should be found he was duly elected into the office, was entitled to hold the same, and to receive the salary and emoluments; and that Kenneth Mackenzie should be prohibited from executing the said office, or from drawing any part of the salary; and if he had received any part, that he should repeat the same to the pursuer.

The parties called in this action were, Kenneth Mackenzie the competitor, and nine of the Commissioners of Supply, who had concurred in his appointment, in the view of the pursuer's being indemnified by them of the expense incurred in consequence of their improper procedure.

The defenders objected, That all parties having an interest had not been called; and the Lord Ordinary "sustained the defence, that the whole of the Commissioners of Supply, who voted for and elected Kenneth Mackenzie, of Kilcoy, upon the 30th of April last, were not called as parties to this process."

The pursuer reclaimed, and maintained, That it was not necessary to call any other than the person competing for the office, as in other cases, where third parties might have an indirect interest; such as a competition of deacons in different corporations, where it was not necessary the individual members of the

#### No. I.

In an action, for having it declared that the pursuer was duly elected Collector of the Cess, and was entitled to the emoluments of the office, the whole Commissioners of Supply of the county, as having an interest, must be called as parties.

No. 1. corporation should be called. By the same rule that the defenders insisted upon calling all the Commissioners of Supply, they might insist upon calling the whole heritors of the county as ultimately liable in payment of the cess; which would be both absurd and unprecedented.

The defenders answered,

That as the whole Commissioners of Supply of the county were answerable for the collector whom they appointed, and ultimately liable to make good the cess to Government, it was clear that they must necessarily be parties to every question of this kind; the scope and tendency of which was to decide who was to be the person intrusted with the public money, and for whom they were to be responsible.

In support of the proposition, that the Commissioners were liable to make good the cess, and were answerable for the collector appointed by them, the defenders referred to the following authorities: Black Acts, St. 1424, C. 11.—St. 1489, C. 9.—1597, C. 281.—1621, C. 2.—1661, C. 14.—Act of Conven. of Estates, 1667.—St. 1670, C. 3.—1672, C. 2.—Act of Conven. 1678.—St. 1681, C. 3.—1685, C. 12.—1686, C. 2.—1689, C. 32.—1690, C. 6.—1693, C. 2.—1695.—1696, C. 1.—1698, C. 1.—1701, C. 15.—1702, C. 6.—1704, C. 4.—1705, C. 7.—1706, C. 2.;—and all the supply acts since the Union. Bankton, V. 2. p. 575. See DICTIONARY, *voce* MINOR, Sect. 2.

Upon advising the petition and answers, the Lords adhered.

Lord Ordinary, *Monboddo*.  
Clerk, *Ross*.

For Roderick Mackenzie, *H. Dundar*.  
For Kenneth Mackenzie, *St. Lockhart*.

R. H.

*Fac. Coll. No. 79. p. 283.*

1802. *January 19.* STEWART *against* KINLOCH.

No. 2.  
Application  
of the acts of  
parliament  
containing  
the nomina-  
tion of com-  
missioners of  
supply.

A VACANCY having occurred in the office of collector of the land-tax for the county of Perth, a meeting of the commissioners of Supply took place upon the 30th April 1800, for the purpose of supplying it. At this meeting, the Sheriff of the County took the chair, and appointed the clerk, for the purpose of electing a preses, to call over the names of the Commissioners of Supply, as they stood in the acts 37th Geo. III. C. 35. and 38th Geo. III. C. 26. to which nomination, the act for the redemption of the land-tax had a reference. But he refused to receive the votes of those persons present, whose right to vote rested merely on the 39th and 40th of Geo. III. C. 31. containing a nomination of additional Commissioners for enforcing certain duties upon pensions and offices in England, but which, in his opinion, did not appear to relate at all to the Commissioners of Supply for the county of Perth.

Upon which it was represented to the Sheriff, "That by the act 39th and 40th of his Majesty, C. 31. the gentlemen were entitled to vote, and to act "as Commissioners of Supply of the county of Perth; and that their nomi-