No 359.

'And we consent to the registration hereof in the books of Council and Session, or in the Lyon-court books of Scotland, that letters of horning on six days, and all other execution needful, may pass hereupon in form, as effeirs,' &c.; wherefore it was *contended*, That an extract of one of these bonds of cautionry from the Lyon-court books must be considered as a sufficient warrant for such letters of horning.

With respect to the practice, the clerk gave information, that he never knew any instance but twice when he gave the horning, upon reading an act to him; and, upon being told that it was a rescinded one, he had constantly refused to do it. The Lord Ordinary mentioned a note of cases laid before him by the presenters of the bills in question, viz. The Lyon against ——, 26th July 1666, No 355. p. 7648.; Stair, 13th Feb. 1668, Grierson against M'Ilroy, No 357. p. 7651.; and 27th June 1673, Heriot *contra* Fleming No 356. p. 7650.

The Court were clearly of opinion, upon the *first* point, that the bill at M'Donald's instance ought not to be passed, the act 1644, by which the Lyon-court was put upon the same footing with other inferior courts, as to this matter, being a reseinded one, and as there had been no uniform practice since, such as to afford a plea of prescription in the Lyon's favours; and, upon the *second* point, it was also agreed, that the registration of the bond in the Lyon-court books was no sufficient warrant for issuing a horning; and, therefore,

"Remitted to the Lord Ordinary on the bills to refuse to pass both bills."

Act. *Dean of Faculty.* Clerk, *Tait.*

Fol. Dic. v. 3. *p.* 360. *Fac. Col. No* 130. *p.* 345.

No 360.

The Lyon-court having fined a person for having assumed arms without matriculation, and decerned him to forfeit the furniture which bore such arms; the Lords found that the Court was competent in such actions, but that its jurisdiction was not privative. And on the merits of the case,

1778. *June* 24.

Procurator-Fiscal of the Lyon-court, *against* William Murray of Touchadam.

Mr Murray was cited before the Lyon-court by the Procurator-fiscal, for having assumed ensigns-armorial without matriculation, as required by the acts 1592, c. 127. and 1672, c. 21. The precept concluded upon these acts for certain penalties, and for escheat of the goods and furniture on which the arms were represented.

The Lyon-depute having decerned in terms of the libel, Mr Murray brought the cause into the Court of Session by advocation; in the discussing of which, two preliminary points occurred, Whether the Lyon-court was competent to this question; and if competent, Whether it was likewise privative?

The Court, November 30. 1775, "repelled the objection to the competency of the Lyon-court, and also repelled the plea of its jurisdiction being privative."

No 360.
they found, that the defender having been in possession of a coat-armorial prior to statute 1592, such long possession presumed an antecedent right, and that the Lyon could do no more than oblige him to matriculate and pay the usual fee.

The cause having been remitted to the Ordinary, his Lordship, after various procedure, found it proved, that the Murrays of Touchadam were in possession of a coat-armorial prior to the act of Parliament 1592; and that, since the 1660, they had been in use to bear the supporters, crest, and device, they now bear: "That such long possession infers an antecedent right, and excludes all challenge of defect of such antecedent right: That William Murray was not in *mala fide* to continue the use of the armorial bearings which his predecessors enjoyed; and that there is no sufficient warrant for the penal conclusions of the original summons; and, therefore, assoilzied Mr Murray, reserving to the Procurator-fiscal to charge him to matriculate his armorial bearings in terms of the statute 1672, and to pay the fees exigible from a baron, and no more, as the said statute bears: And also, reserving to the officers of the said court to exact, further, a reasonable sum from Mr Murray, in case he chooses to be furnished, not only with a blazoning, in terms of art, but also with a painting in water colours, and other ornaments; these being things which the Lyon is not bound, by law, to provide without a suitable remuneration."

The pursuers having reclaimed, December 20. 1776, the Court adhered to this interlocutor, excepting as to the fees exigible on matriculation, as to which "parties were allowed to be heard further."

The pursuers *alleged*, That, as to the fees, subsequent usage had derogated from the statute 1672, and had established higher fees. In support of which, eleven instances were condescended on, all within the last twenty years.

Answered; The statute regulates the fees only where the right to the arms to be matriculated is prior to the 1672, as in the present case. But, in the instances adduced by the pursuer, new grants, either of arms or supporters, were obtained from the Lyon, and, therefore, they establish no usage contrary to the statute. These instances are likewise too few, and too recent, to ascertain the legal fees in any case.

The Court found, "That the Lord Lyon can exact no higher fees for matriculating Mr Murray of Touchadam's arms than ten merks, being the fees exigible by the statute 1672 from a baron."

Act. *Solicitor General, Ja. Boswell.* Alt. *Rae.*

Fol. Dic. v. 3. *p.* 360. *Fac. Col. No* 22. *p.* 36.