1783. *February* 28. PATERSON *against* MAGISTRATES of STIRLING.

No 106.

THE LORDS sustained their own jurisdiction to make regulations for the public markets of a burgh royal, and to alter those made by the Magistrates.

Fol. Dic. v. 3. *p.* 344. *Fac. Col.*

*** This case is No 107. p. 1997, *voce* BURGH ROYAL.

1783. *December* 9. The SHERIFF-CLERKS, Petitioners.

No 107.
Found, that the acts of sederunt, regularing the dues of officers in inferior judicatories, cannot be altered but by parliament.

THE fees of the officers in the Sheriff-courts were regulated by the law of Malcolm, c. 7; and by an act of the Privy Council, with the concurrence of the Court of Session, in 1606, confirmed by a statute in 1621, c. 12; when a power was granted to the Privy Council to ascertain such fees as had been omitted, and their determination declared equivalent to an act of Parliament.

Upon the abolition of the heritable jurisdictions, authority was given, by act 20th Geo. II. cap. 43, to the Court of Session, on or before the 25th of March 1748, to fix, by one or more acts of sederunt, the dues exigible by those employed in the circuit, Sheriff, and Stewart courts, which should not be altered but by act of Parliament; which acts of sederunt were accordingly made.

These regulations the Sheriff-clerks thought incomplete and inadequate. They complained, that while some articles of employment were omitted altogether, or rated below their proper value, expedients had been fallen upon to evade even the established fees. Thus, it was said, that the fees payable at the inrolment of freeholders had never been mentioned; that the rate of the dues of extract, which had been proportioned to paper of an ordinary size, was become much too low, by the encreased dimensions of that now in use, calculated to diminish the expense of the stamp-duties leviable by government; and that the hypothec for their dues competent to them on the papers lodged in Court, had been eluded, by the parties obtaining advocations to the Court of Session, the whole vouchers being in this manner taken out of their hands.

All these different grounds of complaint were enumerated in a petition for the Sheriff-clerks, in which they craved the authority of the Court of Session for exacting their dues in future according to tables proposed by them.

Upon advising this petition, the LORDS ordered a hearing on the competency of the Court of Session to make ordinances of this sort; when it was

Pleaded for the Sheriff-clerks; It were equally absurd, that dues of this kind should be capable of ascertainment by the legislative authority only, as that they should be left, in every instance, to the covenant of parties. The cognizance of such matters, therefore, must be lodged in the supreme judicatories, who are authorised to find a remedy for every wrong, and in a peculiar

No 107. manner to direct the measures necessary for the speedy and regular administration of justice.

Formerly the Privy Council of Scotland considered themselves as warranted along with the Court of Session, to adjust the fees which might be demanded in the different courts; and although, after they had committed many acts of usurpation and arbitrary power, their abolition took place in the year 1710, their civil authority, where not inconsistent with the principles of political liberty established at the Revolution, has been understood to be transferred to the Court of Session, as that in criminal matters has devolved on the Justiciary Court; Kames's Introduction to the Principles of Equity, p. 14, edition 1765; Bankton, b. 4. tit. 9. § 22. The Court of Session accordingly, in several instances, have exercised a jurisdiction of this sort. In 1723, when the mode of striking the Sheriff-fiars was established, they ordained extracts to be given at the rate of 7d each: And in the year 1765, upon a complaint that the Sheriff-clerks were defrauded of their dues of extract, in consequence of the parties' obtaining letters of advocation, they appointed a committee of their number to give redress.

Nor can the instances in which the regulations enacted by the Privy Council, and by the Court of Session, have received a Parliamentary sanction, or have been preceded by special commission from the legislature, be viewed as derogatory to the inherent and original jurisdiction of those Courts. The statutes of that import were obviously intended to give the effect and permanency of an act of Parliament to the particular regulations then introduced; as may be strongly inferred from the expressions used by the Court of Session in 1748, which limit, in very clear terms, the act of sederunt of that date, 'to the 'dues exigible for or on account of the respective matters or things ascertained 'in the said tables.'

Observed on the Bench; A distinction ought to be made between the establishment of a general code of regulations, and an interposition in particular instances, either where no regulation has taken place, or where those in force have been evaded. Of the latter sort were the act of sederunt in the year 1723—the one proposed in the year 1765; and such would be any explanation which might be necessary with regard to the encreased size of paper used in deeds subject to the stamp-duties.

The former was the prerogative of Parliament. The Privy Council of Scotland, an arbitrary and tyrannical court, assumed it in the year 1606; but the rules they introduced were soon after ratified in Parliament. The various Parliamentary commissions since that time, and the statutory regulations in 1672, 1695, and 1696, concerning the dues exigible in the Courts of Session and Justiciary, were so many proofs that no authority of that extent could be exercised by any court in Scotland.

This application was considered by the Court as an attempt to obtain an al-

teration of the acts of sederunt 1748, which by 20th Geo. II. had been declared unalterable, except in Parliament. No 107.

THE LORDS "found, that the Court had no power to vary, alter, or make any addition to the fees established by the acts of sederunt 1748, and therefore refused the petition."

For the Sheriff-clerks, *Crosbie, Blair.* Clerk, *Home.*

C. *Fol. Dic. v.* 3. *p.* 342. *Fac. Col. No* 136. *p.* 214.

1790. *February* 2.

Sir WILLIAM DUNBAR, and Others, *against* Sir JAMES SINCLAIR.

No 108.
The Court of Session is competent to try a party's right to a peerage, when stated as an objection to his continuance on the roll of freeholders.

SIR WILLIAM DUNBAR, and other freeholders of the county of Caithness, made this objection against Sir James Sinclair's remaining on their roll, that, though he had not assumed the honours of the Earldom of Caithness, he had acquired, by succession, the right of that peerage.

The objection having been repelled by the Court of Freeholders, a petition and complaint against that judgment was preferred, and followed with answers; after which a hearing in presence took place, the chief subject of debate being, whether it was competent for the complainers to produce evidence of their allegation. In support of the affirmative, they

Pleaded, The Court, by various statutes, has power, and is required, to take cognizance of all questions respecting inrolment of freeholders, in which are comprehended such as relate to the disqualification arising from the state of a peer. By the statute of 1661, cap. 35. *noblemen* are expressly prohibited from acting as freeholders.

A peerage is *jus sanguinis*, which inheres in the person, and cannot be abandoned. It was so determined in Lord Ruthven's case, in 1640, and in that of the Viscount of Purbeck, in 1678. Peerage is, no doubt, a *privilege*; but it is likewise in the nature of an indispensable *office*.

The right to a peerage, then, as soon as it has devolved, though not yet assumed by the party, creating a bar to inrolment, that point comes necessarily under the cognizance of the Court. Without such incidental cognizance, the jurisdiction conferred and enjoined by the statutes would be frustrated.

It is not extraordinary that matters should be indirectly judged of in Courts which, with regard to them, have no original jurisdiction. The English statute of 7th and 8th William III. has enacted double damages, as a penalty, on officers making a false return of the election of a Member of Parliament, action for such damages "being brought within *two years*." As the matter, however, might not be tried in the House of Commons during those two years, it has been found, that the merits of an election could, to that effect, be judged of by the Courts of law; Wynne *versus* Middleton, *anno* 1745; Wilson's