

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-

" nation could only be considered as a rider upon the act." To which it was answered, " That the only acts of Parliament naming Commissioners for laying on the land-tax in the county of Perth, were those produced by the Sheriff: " That the law they pretend to act under, is an act of the present session, appointing Commissioners for executing an act of parliament, which is nowise connected with the business of this day; and therefore these gentlemen cannot be received as members of that meeting." The Sheriff persisted in refusing to receive these votes, which, however, were given under protest, both for the presses of the meeting, and for the collector of the county.

It appeared, upon calling the votes for the office of collector, that a majority of those who stood upon the roll of Commissioners, in virtue of the acts 37th and 38th of the King, was in favour of Mr. Kinloch of Gourdie. If, however, the votes of those gentlemen who claimed to be ranked among the Commissioners of Supply, under the act 39th and 40th of the King, were taken into account, the majority of the meeting appeared to be in favour of Mr. James Stewart, writer to the Signet.

Kinloch was declared to be duly elected, but it was at the same time protested by those, whose right to act as Commissioners had been rejected, that Stewart was duly elected by a majority of votes.

Thereafter Stewart raised an action against Kinloch, to have it found that he had no right to the office of collector of the cess and land-tax for the county of Perth, and that he should be obliged to denude himself of the said office, in favour of the petitioner.

The Lord ordinary reported the cause, and the court, 10th March 1801, absolved the defender. Stewart presented a reclaiming petition, in which he

Pleaded: The intention of the act 39th and 40th Geo. III. C. 31. evidently appears to support the nomination of those gentlemen as Commissioners of Supply, whose votes were refused by the Sheriff. The objection to them is not a defect, but merely an omission. And, at all events, the subsequent act of parliament 39th and 40th Geo. III. C. 68. must entirely remove every objection. It is entitled, " An act for extending the powers of the commissioners, named in an act made in the present session of parliament, entitled, " An act for appointing Commissioners to put in execution an act of this session of Parliament, entitled, an act for continuing and granting a duty on pensions, &c. certain duties on sugar, malt, &c. together with those named in two former acts for appointing Commissioners of the land-tax." It then goes on, " For indemnifying such persons named in the said act, as have acted as commissioners of the land-tax, and for rendering valid certain acts done by them." The preamble states, " Whereas it is necessary that the additional Commissioners named in an act of this session of Parliament, viz. 39th and 40th Geo. III. C. 31. should also be authorised and empowered to put in execution, an act of the 38th year of his present Majesty, entitled, An act for grant-

No. 2. “ing an aid to his Majesty, by a land-tax; and also an act of the same year, entitled, an act for making perpetual, subject to redemption and purchase, the several sums of money now charged in Great Britain as a land-tax, &c.” Then follow the enacting clauses, rendering valid and effectual the whole actings of the persons named Commissioners, under the defective act, and restoring matters precisely to the same situation as if the mistake had not occurred in the former act, in these words, “And that all acts whatsoever, done by any of the foresaid persons, as commissioners of the land-tax since the passing of the said act of this session of Parliament, shall be, and are hereby declared to be, valid and effectual in all respects and to all intents and purposes whatsoever as if such acts had been done after the passing and by virtue of the authority of the present act.” This statute is to all intents and purposes a public act of Parliament applying, not to the county of Perth, but to all the other counties of Scotland, and as such must have effect in a court of law; Blackstone, I. 91.; the power and efficacy of retrospective statutes having been recognised on many occasions; 28th Geo. II. C. 24. Banks against Jaffrey, June 6, 1792, No. 52. p. 9384.

Answered: The persons whose votes were refused by the Sheriff, never acted as Commissioners of Supply. They merely offered to act. The supplementary statute, therefore, which was intended to indemnify those persons who had *bona fide* acted as Commissioners under the defective act, does not apply. If this supplementary act be held to be a public act of Parliament, it could not be the intention of the Legislature that it should operate *retro*, so as to affect the private rights of any individual already acquired, without giving compensation; and, if it be held as a private act, it cannot affect the rights of a person who was not a party to it, as such acts are always passed *salvo jure cujuslibet*. The general words in this supplementary statute cannot be so interpreted; Bacon's Abridgment, p. 636. and 640.

The Court adhered.

Lord Ordinary, Justice-Clerk. Act. Hamilton, Campbell junior. Agent, Ja. Hamilton, W. S.
Alt. Lord Advocate Hope, Craigie. Agent, Ja. Keay, W. S. Clerk, Home.

J.

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