

this petition which would have the effect of again allowing the petitioner to practise as a law-agent. I do not think it is necessary to express, or even to form, any opinion as to whether the crime of forgery is, for the purposes of such a question as the present, indelible in the sense in which that term was used in the argument; but it is not a little striking that, so far as is known, an order reinstating a law-agent who had been guilty of forgery has never been pronounced either in England or Scotland. It is sufficient for the purposes of the present case to say that after the expiry of only seven years it would be out of the question to make an order allowing the petitioner to resume the practice of an honourable profession. In a question of this kind great weight ought to be attached, and always has been attached, to the opinion of the society or societies of law-agents with whose members a person in the position of the petitioner would be brought into contact if he was allowed to resume practice. Their position is not merely that of sitting in judgment upon the moral aspects of the question; they have to consider more practical matters. The effect of the order which is asked for would be to force back among legal practitioners a person who had been convicted of forgery, as one with whom they would have to do business, and to trust in the ordinary conduct of that business. In the work of a law-agent there is, and must be, a considerable amount of mutual confidence, without which the business could not be carried on. The members of the profession are therefore well entitled to be heard in a matter of this kind; and the attitude taken up both by the Incorporated Society of Law-Agents and the Society of Procurators of Mid-Lothian confirms the view, which I would have arrived at upon independent grounds, that no adequate cause has been shown for granting the prayer of this petition.

LORD M'LAREN—I concur, and have only one observation to add. While an application of this kind is made to the Court, and must be disposed of according to the opinion of the Court, great weight will always be attached to the recommendation of the professional body to which the petitioner belonged. Even if a recommendation in his favour had been obtained, his restoration would not necessarily follow. In the present case the Society strongly object to the prayer of the petition being granted; and I agree with your Lordship that the petition should be refused.

LORD KINNEAR concurred.

LORD ADAM was absent.

The Court refused the prayer of the petition.

Counsel for the Petitioner—Lorimer. Agent—James Andrews, Solicitor.

Counsel for the Respondents—Macfarlane. Agents—Carmont, Wedderburn, & Watson, W.S.

Saturday, October 19.

FIRST DIVISION.
MAGISTRATES OF ABERDEEN,
PETITIONERS.

Burgh—Statute—Clause Saving Local Acts—Town Councils (Scotland) Act 1900 (63 and 64 Vict. c. 49), sec. 117—Aberdeen Corporation Act 1891 (54 and 55 Vict. c. ccciv.)

The Town Councils (Scotland) Act 1900 enacts (section 117)—“Nothing in this Act contained shall supersede, prejudice, or affect the provisions of any local Act applicable to any burgh, or the forms of prosecutions and procedure in use therein under such Act.”

The tenure of office of magistrates in the burgh of A. was regulated by a local Act of 1891 in a manner inconsistent with the provisions on that subject of the Town Councils (Scotland) Act 1900. *Held* that section 117 prevented the regulations of the local Act from being superseded by the regulations contained in the general Act of 1900.

This was a petition at the instance of the Lord Provost, Magistrates, and Town Council of Aberdeen for an order under section 113 of the Town Councils (Scotland) Act 1900.

The following facts were set forth:—“The tenure of office of the Magistrates of Aberdeen has since 1871 been regulated by special legislation, and differs from that of the other Scotch burghs. The regulating enactment, which is or otherwise until the 31st December 1900 was in force, is contained in section 15 of the Aberdeen Corporation Act 1891, which re-enacts a similar provision in the preceding local Acts of 1871 and 1883. The said section is as follows:—“The Lord Provost and Treasurer of the city shall respectively remain in office for the period of three years. The bailies and other office-bearers shall be elected annually and remain in office for the period of one year only. The bailies shall take precedence in the order of their election, and any bailie or other office-bearer going out of office may be re-elected.”

The Town Councils (Scotland) Act 1900 contains, *inter alia*, the following provisions:—Section 33—“The existing town council or commissioners and magistrates of every burgh shall be the town council and magistrates under this Act, and the existing commissioners of a police burgh shall individually be the councillors thereof, but the retirement and filling up of vacancies shall be regulated by this Act.” Section 56—“The magistrates shall be elected by the town council from among their own number. The provost shall hold office from the date of his election as such until the expiry of three years from the first Tuesday of November immediately preceding his election, and during that period he shall (provided he continues to hold the office of provost) continue to hold office as a councillor, and be held at each

of the elections occurring during his term of office to have been the shortest time in office of the councillors for the burgh or for the ward which he represents." Section 57—"The magistrates, other than the provost, shall be called bailies, and each bailie shall hold office from the date of his election to the date at which he falls in ordinary course to retire as a councillor." Section 117—"Nothing in this Act contained shall supersede, prejudice, or affect the provisions of any local Act applicable to any burgh, or the forms of prosecutions and procedure in use therein under such Act." In Aberdeen the number of magistrates, other than the Lord Provost, is six. They rank in the order in which they are elected each year. The Town Council consists of thirty-four members, being three from each of the eleven wards of the city, and the Dean of Guild. Accordingly, eleven members retire annually, one for each ward. Hitherto the magistrates have been elected annually at the meeting of Council for that purpose held after the annual election in November, and have remained in office for one year only. At the coming election in November 1901 not one of the six existing magistrates falls in ordinary course to retire as a councillor. Further, as they were elected to remain in office only for one year, from November 1900, their period of office terminates in November 1901. The present Lord Provost falls to retire from office in November next both as Lord Provost and as a councillor, and in ordinary course the returning officer at said November election would be the senior magistrate. There is great difficulty and dubiety as to whether the provisions of the said Town Councils (Scotland) Act 1900 supersede or leave unaffected the enactments of the said Local Act of 1891 above quoted. If the said Local Act is unrepealed *quoad* the election of magistrates, then an election of magistrates falls to be held at the first meeting of Council held for the purpose after the municipal election in November next, according to the said local Act. Upon the interpretation of the foresaid section 117 of the Town Councils (Scotland) Act 1900, in a question which had arisen concerning the sections in the said Act dealing with matters of audit, a circular was issued by the Secretary for Scotland to the town clerks of the various burghs, in which his Lordship states, that as advised he is of opinion that section 117 of the Act "is not to be read absolutely, but that where it comes into conflict with words of positive enactment, the words of positive enactment must prevail." On the other hand, the petitioners have since been advised by counsel concerning the sections above quoted, that section 15 of the Local Act of 1891 is not superseded by the foresaid section 57 of the Town Councils (Scotland) Act 1900.

The prayer of the petition, after providing for intimation and advertisement, proceeded in the following terms:—(1) To pronounce an order or finding that an election of the six magistrates shall be held at the first meeting of Council after the

constitution of the new Council in November next, the magistrates then elected to remain in office for the period of one year only from the date of their said election, all in terms of the Aberdeen Corporation Act 1891; or otherwise (2) to pronounce an order or finding that the existing magistrates shall, notwithstanding that their election was for one year only, continue to hold office during and after November 1901, until the date or dates at which they severally fall to retire as councillors; or otherwise (3) to pronounce an order or finding that the existing magistrates shall cease to hold office at November 1901, and that the vacancies in the magistracy thereby created shall be filled up by election at the said first meeting of Council, and that the persons so elected shall continue to hold office until the date or dates at which they severally fall to retire as councillors; or otherwise (4) to pronounce such other order or finding as may enable magistrates to be elected or continued in office at or after November 1901, or as may be appropriate to the case which has made the present application necessary; and to authorise the petitioners to charge the expenses of this petition against the city rate of Aberdeen; and to find any persons who may oppose the granting of the prayer hereof liable in expenses."

No answers were lodged.

After hearing counsel for the petitioners,

LORD PRESIDENT—The question in this case is, whether section 117 of the Town Councils (Scotland) Act 1900 prevents certain express provisions of the local Acts applicable to the city of Aberdeen from being superseded by the general provisions of the statute? For about twenty-nine years prior to the passing of the Act of 1900, and in three successive local Acts, Aberdeen had obtained the provisions which it now says are saved by section 117. It is plain that the successive municipal authorities of Aberdeen and the citizens whom they represent have attached much importance to these provisions as they occurred in the local Acts of 1871, 1883, and 1891. The Act of 1900 contains many general provisions, and very useful provisions, but, just as in some of the earlier General Police Acts, certain large towns were exempted from the general provisions in respect of their own local enactments. The general provisions of the Act of 1900 are qualified by section 117, which enacts that "Nothing in this Act contained shall supersede, prejudice, or affect the provisions of any local Act applicable to any burgh, or the forms of prosecutions and procedure in use therein under such Act." Now, it seems to me that if we were to give effect to the general provisions of the Act of 1900 as regards Aberdeen where they differ from those of the local Acts, we would allow the general Act of 1900 to "supersede, prejudice, or affect" the provisions of the local Acts, as there is no more complete way of affecting a provision than by substituting another provision for it. And accordingly it seems to me that that salvo

in section 117, which is manifestly a very large one, saves the provisions in question, which have occurred in the three Aberdeen Acts, and now stand upon the Corporation Act of 1891. I therefore think that we should answer the first part of the question put to us in the affirmative, and make a finding that the reservation is valid and effectual.

LORD ADAM—I am of the same opinion. I think the words of section 117 of the Act of 1900 are quite clear, and, as your Lordship has pointed out, nothing in this general Act is to “supersede, prejudice, or affect” the provisions of any local Act applicable to any burgh. Now, it is stated to us that in the city of Aberdeen the tenure of the magistrates of Aberdeen, that is the bailies, has been since 1871 regulated in a particular manner, and that the rule laid down in 1871 was repeated in 1883, and again repeated in the last Act of 1891. There is, therefore, in the local Acts applicable to the burgh of Aberdeen an express provision as to the tenure of the office of magistrates or bailies of Aberdeen. There is no doubt of that. Now, I agree with your Lordship that when we are told that nothing in the general Act is to supersede, prejudice, or affect the provisions of any local Act, I can only come to one conclusion in the matter, as matter of construction, that the existing tenure of office of the magistrates of Aberdeen is regulated by their existing local Acts, and is not affected by this general Act.

LORD M'LAREN—The Town Councils Act of 1900 appears to me to be in its main characteristics a consolidation Act. It repeals twelve previously existing statutes, all of which may be said to relate to the constitution of royal and parliamentary burghs and their government, and to have little or nothing to do with the exercise of the powers of the magistracy in relation to such matters as the prevention of crime and public health and police. There is really nothing in this Act relating to police administration. It deals with the election and qualification of town councils and magistrates, general regulations for the conduct of their business, and finance. It has nothing to do with the details of administration, and therefore I cannot attach much importance to the words at the conclusion of section 117, that the Act is not to affect the forms of prosecution and procedure in use under any local Act, because in point of fact there is nothing in this Act of 1900 that would affect or bear upon the forms of prosecution and procedure. I should therefore not think it a sound principle of construction to limit the provisions of section 117 to matters *ejusdem generis* with prosecutions and procedure, which really do not fall within the scope of this enactment at all. In common with your Lordship I read this section 117 as one intended to reserve all provisions of any local Acts of Parliament which conflict, or may be thought to conflict, with the provisions of this Act. As matter of speculation, I should think there are very few provisions

in local Acts which do conflict with this general Act, because we know as matter of history and policy of Parliament that the constitution of burghs and their councils is regulated by general Acts and not left to be manipulated by local Acts. It appears, however, that in this one particular—the tenure of office and mode of election of the bailies of Aberdeen—local legislation has been obtained from Parliament different from what prevails in the other royal and parliamentary burghs of Scotland. The question is, whether that difference of tenure can be held to be repealed by a general Act which expressly reserves the effect of local statutes. I am of opinion that no special privileges contained in local Acts can be held to be abrogated by the Town Councils Act of 1900; and therefore that the tenure of office of bailies must continue in Aberdeen as it has been. It would follow therefore that the first alternative of the prayer of the petition should receive effect.

LORD KINNEAR—I have come to the same conclusion for reasons that have been already given, and I only add that the decision your Lordship proposes does not appear to me to touch any question that may be raised as to the operation of the section of this statute which provides for accounts and audit, or affect in any way, one way or other, the soundness of the opinion that may have been given on that subject by the advisers of the Secretary for Scotland. The question we decide seems to me to stand entirely apart from that which it is stated in the case was raised for the consideration of the Scottish Secretary.

LORD M'LAREN—May I say that I agree with Lord Kinneair's additional observations as to the provisions relating to account and audit.

The Court pronounced an order in accordance with the first alternative of the prayer of the petition.

Counsel for the Petitioners—Kennedy. Agents—Gordon, Falconer, & Fairweather, W.S.

Tuesday, October 22.

FIRST DIVISION.

KERRIGAN, PETITIONER.

Parent and Child—Minor and Pupil—Custody—Illegitimate Child—Mother's Right to Custody—Agreement by Stranger to Adopt Child Permanently.

An averment that the mother of an illegitimate child has agreed to its being adopted by a stranger on the footing that it should be given to such stranger permanently, is not a relevant answer to a petition presented by the mother for the custody of the child.

Parent and Child—Minor and Pupil—Custody—Illegitimate Child—Custody of Children Act 1891 (54 and 55 Vict. c. 3),