June 10. 1825. I have already stated the reason for my going so much at length into this case. Although I am about to move your Lordships for an affirmance of the judgment, I have thought it my duty, on a case on such a branch of the law, and where the cases run so very near each other, the distinctions between them being so very nice, to state to your Lordships at large, and as clearly as I could, the grounds on which I am humbly of opinion this judgment should be affirmed. I will only further move your Lordships, that this judgment be affirmed.

Appellants' Authorities.—3. Ersk. 8. 29.; Bruce, Jan. 15. 1799, (15,539.); Bryson, Jan. 22. 1760, (15,511.); Ankerville, Aug. 8. 1787, (7010.); Moncreiff, March 3. 8104, (not reported, affirmed); Ross, Nov. 4. 1743; Lesslie, July 24. 1752, (No. 49. Elchies, Taillie); Erskine, Feb. 14. 1758, (4406.); Edmonstone, (case of Duntreath), Dec. 24. 1769, (4409.); Gordon, July 8. 1777, (15,462. and No. 2. Ap. Taillie); Menzies, June 25. 1785, (15,436. Rem. June 30. 1801); Wellwood, Feb. 23. 1791, (15,463.) and May 31. 1797, (15,466.); Titchfield, May 22. 1798, (15,467. affirmed); Jan. 20. 1800, (No. 4. Ap. Taillie); Millar, Feb. 12. 1799, (15,471.); Steel, June 24. 1817, (5, Dow, p. 72.)

Respondent's Authorities.—Syme *v.* Dickson, Feb. 27. 1799, (15,473. affirmed, April 26. 1803), Logan, Dec. 13. 1797, (11,379.)

J. CAMPBELL—SPOTTISWOODE and ROBERTSON,—Solicitors.

No. 37. SOLICITORS in the SUPREME COURTS of Scotland, Appellants. *Shadwell—Lushington.*

KEEPER and CLERKS of his MAJESTY'S SIGNET, Respondents. *Warren.*

College of Justice.—Found, (affirming the judgment of the Court of Session), That it is the privilege, and has been the practice of the Court of Session, to regulate the accommodation necessary for the different bodies composing the College of Justice in the Inner and Outer-Houses; that the Incorporation of Solicitors have no right to demand any specific accommodation beyond what is necessary for attending the daily business of the Court; that such accommodation had been assigned to them equally with other agents; and that an action at the instance of the Incorporation, for further special and general accommodation as a matter of right, and particularly in relation to the conclusion that they had any real and just right and title, with any other class of practitioners, to possess the areas set apart for practitioners and others, is incompetent.

June 10. 1825.

1ST DIVISION. Lord Alloway.

THE Court of Session hold their sittings in three apartments:—1. The Outer-House, or Great Hall, in which the Scotch Parliament anciently assembled, and where the Lords Ordinaries now sit separately as single Judges, to hear causes when first moved in Court, or under remit from the Inner-House: 2. The Inner-House of the First Division, for hearing causes carried for review, or for decision, from the Lords Ordi-

naries attached to that Division, or having their origin in the Inner-House: 3. The Inner-House of the Second Division, for the same purpose. The Court of Justiciary generally meet in the Chamber of the First Division. These two apartments contain each a small gallery. June 10. 1825.

The Faculty of Advocates having been much incommoded in their professional occupations, application was made to the Court for the adoption of an arrangement that would remove the inconveniency arising from idle people filling the passages and seats, and afford free access to the front Bar of the Chambers in which the Inner-House held their meetings. The Clerks or Writers to the Signet, having experienced similar inconveniency, also applied (in conjunction with the Faculty) to the Court; and the result was, an apportionment of a certain space to the Faculty and Writers to the Signet respectively, with authority to appoint servants to exclude all intruders.

The incorporated Society of Solicitors before the Supreme Courts considered themselves aggrieved by an arrangement, in which they thought they saw an invidious distinction created between them and the Writers to the Signet, and an attempt to throw discredit on their respectability as individuals and as a body; particularly to a part of the arrangement which implied the privilege of the Writers to the Signet to wear gowns; and thereupon raised an ordinary action against the Dean of the Faculty of Advocates, as representing that body, and the Keeper, Deputy-Keeper, and Clerks to the Signet, setting forth, That in virtue of their charter of incorporation, prior rights and privileges, Acts of Sederunt, Acts of Court, and immemorial use and practice, they had the privilege of acting as agents or solicitors in all causes before any Supreme Court in Scotland; and, as such, have a right to a free and uninterrupted access to the several Court-rooms where the sittings of the respective Judges were held: That lately an attempt had been made by other practitioners to appropriate to themselves particular seats or parts of the areas of these Courts, and deny access to the pursuers; in particular, that the Faculty of Advocates, and Writers to the Signet, had appropriated to themselves certain seats and benches, placed their name on them, and appointed servants to exclude all other parties: That this exclusion interrupts, and is injurious to the pursuers' practice as solicitors, is an encroachment on their rights and privileges, and is insulting and degrading, contrary to the statute June 12. 1673, and is unsanctioned by Act of Sederunt, Act of Adjournal, public regula-

June 10. 1825.

tion of Court, or any authority whatever; and therefore concluding that it should be declared, that the pursuers have an equal right and title with any other class of practitioners, to possess, occupy, and enjoy, all or any part of the areas, seats, and benches of the Courts, heretofore set apart for practitioners and others; and the defenders ought and should be ordained, in all time coming, to cease and desist from troubling, molesting, or in any way impeding the pursuers in the exercise of their rights and privileges as agents and solicitors in these Courts; particularly, in the enjoyment and occupation, equally along with themselves, of the areas, seats, and benches, heretofore set apart for the practitioners and others, excepting the front Bar occupied by Counsel in cases under actual discussion; and, that the defenders should be ordained to remove the railings, erase the inscriptions, discharge the servants, &c. The pursuers did not insist in this action against the Faculty; but the Writers to the Signet stated in defence,—1. That, in making the order and appointment complained of, the Court exercised a power necessarily inherent in every Court of Justice. It was not an exercise of judicative power, but an internal regulation of Court. If, therefore, the pursuers felt themselves aggrieved, they might apply to the Court to alter the order; but it was incompetent to proceed by ordinary action against the parties to whom the Court had granted the accommodation challenged. 2. That even were it competent to enter, in the present action, into the inquiry, the order was just and proper, and the regulations wise and judicious. The Lord Ordinary ordered informations; and the Court found (27th February 1824), 'that it is the 'undoubted privilege, and has been the constant practice of this 'Court, as appears from various Acts of Sederunt, to regulate 'the accommodation necessary for the different bodies composing 'the College of Justice, both in the Inner and Outer-Houses; 'and that the pursuers have no right to demand any specific 'accommodation beyond what is necessary for the individuals of 'their body attending the daily business of the Court: find, that 'such accommodation has been assigned to them in common with 'the Writers to the Signet, and other agents before the Court: 'therefore find, that the present action, in so far as it concludes 'for any further special or general accommodation as a matter 'of right, especially in so far as the same concludes that 'the pursuers "have an equal right and title, with any other 'class of practitioners in our said Courts of Justice, to possess, 'occupy, and enjoy, during the sittings of the Courts, all or any

'parts of the areas of our said Courts, and seats and benches 'therein, heretofore set apart and appropriated for practitioners 'and others attending the Courts," is incompetent; and dismiss 'the said action accordingly; assoilzie the defenders from the 'conclusions of the libel specially directed against them, and 'decern; but find no expenses due.'* June 10. 1825.

The Solicitors appealed.

Appellants.—1. In making the regulations complained of, the Court did not act judicially, as in deciding a dispute between parties, but assumed a power of granting privileges and honours, to the prejudice of the appellants. The challenge by action of declarator was therefore competent; and as there was a wrong done, it was competent to the appellants to demand redress in the form adopted by them. 2. The respondents have no legal right to claim that a portion of the halls of the two Divisions shall be withdrawn from the public and from the other practitioners. In the Court of Session the Writers to the Signet are merely law agents, having no higher privileges than other law agents: Their privilege of acting as clerks to the Keeper of the Signet is exercised elsewhere. 3. The appellants have not demanded any specific accommodation in the halls of the Court of Session, and it is certain that no accommodation has been allotted to them, 'in common with the Writers 'to the Signet.' On the contrary, the complaint is, that this body have obtained for themselves specific accommodation, and they adhere to it with tenacity, as the means of exhibiting themselves to litigants and the public as a highly privileged class of practitioners, enjoying peculiar favour with the Court. 4. The Court have no power to withdraw a considerable proportion of the Court-rooms from the public and practitioners generally, and to allot it by favour to a particular class of law-agents. The Judges are not proprietors of the Court-rooms. Whatever powers they have, are granted for 'ordouring of proces and hastie expedition of 'justice.' This excludes all proceedings founded on mere will, favour, or arbitrary preference. Neither has the Court a title to confer honour or dignities: it has no right to say that a class of law-agents, clothed in gowns, shall be privileged to exclude other law-agents as less honoured, favoured, and esteemed, from a portion of the Court-rooms, and to oblige them to herd among the multitude. 5. There is no reason of expediency that justifies such a measure. It has no tendency to facilitate judicial

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* 2. Shaw and Dunlop, No. 689.

June 10. 1825.

proceedings; on the contrary, it crowds the passages of the Court-rooms, and impedes the access of the practitioners.

Respondents.—1. The action is clearly incompetent. The Court has exercised a privilege belonging to every Court of Law; and having acted ministerially, or in its administrative character, the appellants, if they thought themselves aggrieved, ought to have applied at once to the Court for redress, but should not have called the respondents as defenders. But, 2. The regulations interfere with no rights or privileges of the appellants. The same access and accommodation are given to them, while professionally engaged, as to the respondents. No injury has been done, nor rights disregarded. If, however, a comparison as to precedency or privilege be instituted, there is no doubt but it is in favour of the respondents, who are not known to the Court merely as agents, but in the original character of clerks to his Majesty's Signet. The accommodation granted to the respondents was obtained by application to the Court; and if further conveniencies were desired by the appellants, the same course is open to them. But a minute detail of the merits of the case is quite unnecessary, since they cannot be listened to in the present action.

In the course of the argument at the Bar, the Counsel for the appellants admitted that they could not dispute the power of a Court to regulate the proceedings before it. On the Counsel for the respondents rising, they were stopped.

The House accordingly ordered and adjudged, 'that the appeal 'be dismissed, and the interlocutors complained of affirmed, 'with L. 150 costs.'

Lord Gifford.—This is a complaint made by a very respectable, and a very considerable body of practitioners in the Court of Session. The complaint is made against the Faculty of Advocates, and Writers to the Signet; and the grievance complained of is, that, by an order of the Court, the Solicitors are excluded from a considerable part of the body of the Court-rooms.

The appellants' Counsel very properly admitted, that they could not dispute the right of a Court in general to regulate the proceedings in that Court.

In 1821 it was thought necessary by the Court of Session to make a regulation, allotting certain seats to the Advocates and other persons.

The front row at the Bar was allotted to the Advocates engaged in causes actually in hearing. The second row to the Agents generally of every description engaged in those causes. Another portion of the

seats they allotted also for the Advocates, and a portion also to the Writers to the Signet. June 10. 1825.

The appellants stated in their summons, that they had a right to a full, free, and uninterrupted access to the several Court rooms; and concluded, that it ought to be found and declared, that they had an equal right and title with any other class of practitioners to occupy the seats, and that the Faculty of Advocates and Writers to the Signet should cease to prevent them from doing so.

It was stated at the Bar, that the proceedings against the Faculty of Advocates were abandoned.

It has been stated also, that the appellants, as agents employed in conducting causes, ought to have free access to the Courts. But here they are, as a body, seeking to have a place in the Courts allotted to them; or, if that shall not be so done, that the Writers to the Signet should have no place peculiarly allotted to them.

It should be recollected, that regulations of this kind are made, not only for the benefit of the practitioners in the Court, but for the benefit and advantage of the public in general also.

Considering the respectability of the body who are the appellants, I cannot help regretting, that when they found the allotment of seats made, by which they thought themselves aggrieved, they did not make a respectful representation to the Court. I am sure it would have been attended to. Instead of doing this, however, being hurt at the preference which had been given to the Writers to the Signet, they chose rather to bring the question here.

There certainly is, in my opinion, no foundation for making this complaint in this form; and I shall therefore move the affirmance of the judgment.

Appellants' Authorities.— Act of Sed. June 23. 1750; 1672, c. 16. § 31.; Act of Sed. Aug. 10. 1754; Sir Ilay Campbell's Act of Sed. p. 58.; Pitmedden's MS. Books of Sed. p. 68.; Act of Sed. Jan. 29. 1642; Feb. 28. 1662; June 22. 1665; Nov. 3. 1671; Feb. 3. 1685; Dec. 16. 1686; Nov. 6. 1690; 1693, c. 27.; Act of Sed. Feb. 12. 1754; 1540, c. 93.

Respondents' Authorities.—Act of Sed. Feb. 3. 1685; Feb. 12. 1754; June 12. 1760; Aug. 18. 1754; Feb. 23. 1687; June 17. 1746; Nov. 2. 1748; Jan. 28. 1756.

SPOTTISWOODE and ROBERTSON—J. CHALMER,—Solicitors.

SARAH GRAHAME, and Husband, Appellants.—*Shadwell—Stuart.* No. 38.

FRANCIS GRAHAME, Respondent.—*Brougham.*

Clause—Process—Res Noviter.—Found, 1. (affirming the judgment of the Court of Session), That deeds on public record cannot be regarded as instrumenta noviter reperta, so as to entitle a party to found on them under the rule res noviter veniens,