

1740. *December 9.* EARL of HYNDFORD *against* The BURGH of Hamilton.

**No 19.**

Found, that the Sheriff could not transfer his court to the head burgh of the shire, from a burgh of regality where it had been held for centuries.

THOUGH the head-burgh of the shire be the place where the Sheriff-courts of right ought to be held, yet where, for almost two centuries, the Sheriff-court had been held in a burgh of regality, it was found that the Sheriff could not transfer the Sheriff-court from thence to the head-burgh of the shire, notwithstanding it appeared from the records, that in the most ancient times, the Sheriff-courts had been for some years held at the head-burgh of the shire; for that nothing certain could be inferred from the court's being held at the head-burgh for some years, in ancient times, when the place of courts was more ambulatory, to defeat the right which arose to the burgh of regality from such ancient possession, the original whereof could not now be known. And as to the argument for the Sheriff's power of transferring the courts to the head-burgh, notwithstanding the lapse of time, that he could not compel the burgh of regality to allow him the use of their court-house, or their prison, the long use was thought sufficient to establish to him a right to court and prison-houses.

*N. B.* On this occasion, it was thrown out by an able judge as his opinion, That where a regality, or even a barony, is erected into a body corporate with a burgh, and that there is a prison in such burgh, they are obliged to receive the King's prisoners, whether apprehended within or without the regality; though, where there is no burgh or body corporate, as is the case of the Duke of Athole's extensive regality of Logierieth, even though there be a prison and a court-house, the bailie of the regality is not bound to receive any prisoners but his own; but that wherever there is a burgh erected into a body corporate, then the prison of the regality or barony is the King's prison. *See PUBLIC POLICE.*

*Fol. Dic. v. 3. p. 164. Kilkerran, (CONSUETUDE.) No 1. p. 149.*

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SECT. IV.

Deeds executed in a Wrong Form.—Sasine not Registered.—Wrong Symbols of Sasines.

**No 20.**

It being the custom of a burgh, that all reversions should be under the form of instrument

1554. *June 15.* GALLOWAY *against* BURGH of DUMBARTON.

ANENT the action persewed be Mr Galloway against the Burgesses of Dumbarton anent the redemption of ane burrowland, in the said Burgh be virtue of ane reversion made in form of instrument, but it should have been under the seal