

No 346.

Recompence  
not due for  
the heritable  
bailiary of the  
barony of a  
monastery.

1748. February 18. MAJOR DALRYMPLE *against* The KING'S ADVOCATE.

ON the claim of Major James Dalrymple of Nunraw, Bailie of the Monastery of Haddington, it being found he was only a Baron Bailie, it was *pleaded*, That bailiaries over church lands were not regulated by the act, and to continue, but abolished, and therefore entitled to a recompence; for that the baronial jurisdiction was only to continue in proprietors over their own lands.

THE LORDS found the claimant not entitled to a recompence.

*Fol. Dic. v. 3. p. 364. D. Falconer, v. 1. No 245. p. 330.*

1748. February 26. MR JOHN HAMILTON *against* The KING'S ADVOCATE.

No 347.

Recompence  
due for a  
regality of  
temple lands,  
erected since  
the Reforma-  
tion, of which  
there had  
been posses-  
sion sufficient  
to save it from  
the negative  
prescription.

ON the claim of Mr John Hamilton advocate, for the regality of Drem, consisting of part of the Temple Lands, belonging formerly to the Knights of St John, afterwards granted to the Lord Torphichen, and from him conveyed to the Lord Binning, in whose favour they were erected into a regality 1614, confirmed in Parliament 1617; it was *objected*, This erection stood in need of the positive prescription to support it, for the ratification fell under the King's revocation 1633.

The question depended on, Whether the lands were to be considered as church lands or not; for, if they were temporal, the ratification was not affected by the revocation; and it was sufficient, if the possession had been such as to save the jurisdiction from the negative prescription.

THE LORDS found the claimant entitled to a recompence.

*Fol. Dic. v. 3. p. 363. D. Falconer, v. 1. No 246. p. 331.*

1748. March 1.

URQUHART of Meldrum, and PETER HEPBURN, *against* The KING'S ADVOCATE.

No 348.

Recompence  
due for a de-  
putation of  
sheriffship,  
granted over  
a person's  
own estate.

WILLIAM URQUHART of Meldrum was proprietor of the estate of Cromarty, which had been resigned by George Earl of Cromarty, in favour of Kenneth M'Kenzie, his second son, 'with the heritable and sole deputation of Sheriff, within, and in as far as might be extended to the whole bounds of the lands and estate of the foresaid Mr Kenneth, lying within the shire of Cromarty;' for which jurisdiction he claimed: And it was *objected*, That heritable deputations of sheriffships, over part of a shire, could not be granted.

Peter Hepburn, writer in Edinburgh, having adjudged lands in the said shire, which had been disposed with the like deputation, also entered his claim.

*Pleaded* for the claimants, It has been held immemorably as agreeable to the Constitution of this country, to grant offices heritably, and for the officers to grant heritable deputations. Lords of regality, ecclesiastic as well as laic, made heritable bailies different over separate parts of their estate, and these bailies gave heritable deputations to different persons over different parts of their bailiaries. Such a deputation was the original of the sheriffship of Nairn, found to belong to the family of Calder, as the first title produced for that family is a precept 1405, by Robert Duke of Albany, for infefting Andrew heir of Donald de Kaldore, in the office of Sheriff of Nairn; and the next a precept 1442, by Alexander de Isle Earl of Ross, to the Sheriff-depute of Inverness, his bailie in that part, for infefting William de Kaldore, as heir to his father Donald, in the sheriffship of Nairn, held of him *in capite*; which thus appears to have been a deputy-sheriffship held of the Sheriff of Inverness; and that sheriffship being forfeited by the Earls of Ross 1476, a charter of Nairn was granted by the King to Hugh Kaldore, on the resignation of the foresaid William his brother.

A charter of the sheriffship of Inverness was granted 1508 to the Earl of Huntly, with power to him to name Sheriff-deputes within the bounds of Caithness, Ross, Lochaber, and in other distant parts.

The shire of Bathgate was part of the shire of Renfrew, the sheriffship whereof belonged to the family of Semple, and was by them resigned 1530, in as far as concerned the bounds of the barony of Bathgate, in favour of Hamilton of Trynart; and it is probable, all the little sheriffships were originally deputations from the Sheriffs-principal of the larger adjacent shires, before these bounds were erected into principal shires themselves.

The act of Parliament, in consequence whereof the whole claims are entered, makes express mention of Sheriff-deputeships.

*Pleaded* for the King's Advocate, The division of the nation into shires is part of the public Constitution thereof, according to which it is represented in Parliament; and the Sheriff is the King's ordinary Judge over his district, which it were contrary to polity he should be allowed to parcel out by partial deputations. Writs for election of Members of Parliament are directed to the Sheriff of the whole shire, who also was, of old, the executor of appraisings, and other legal diligences, which are now committed to messengers, as Sheriffs in that part; and still it belongs to him to summon jurors to attend on the Circuit Courts of Justiciary, and to execute the writs issuing out of the Court of Exchequer; all which cannot be done by deputes over particular territories. The Sheriff's office is to govern the territory committed to him, and to provide for the quiet and security thereof; for which purpose, he may ride with gatherings of the lieges, which no other person is allowed to do; and to communicate this power to others, over their own estates, would tend to promote these disorders, which it is a main part of the Sheriff's office to prevent. The Courts ought to be held at the head burgh of the shire, which can only fall

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within one depute's territory ; and the nature of the jurisdiction itself is different from the other heritable jurisdictions, which were originally created in favour of the grantees, who therefore may, by resignation, put an end to them, without consent of the vassals over whom they are constituted ; and it may be consequent thereto, they should have a power of dividing and disposing of them at their pleasure.

For the claimants, The grant of a deputation does not exempt from the jurisdiction of the principal, so that these parts of the Sheriff's office, which have a general relation to the whole shire, may be performed by the Sheriff-principal, or a General-depute. Head Courts are, indeed, confined to the head burghs ; but ordinary Courts, for jurisdiction, may be held anywhere. Writs issuing from superior Courts are directed to the Sheriff-principal, who must send them to his particular deputies, for whom he is answerable.

THE LORDS found the claimants entitled to a recompence.

*Fol. Dic. v. 3. p. 363. D. Falconer, v. I. No. 247. p. 331.*

1748. *March 3.*

THE EARL OF GALLOWAY *against* The MARQUIS OF ANNANDALE.

No 349.

Recompence due for a right of stewartry, clothed with possession over an estate, described as lying within another stewartry, the Stewart of which had no possession over the estate.

THE EARL of Galloway claimed for the stewartry of Gairlies, granted to his predecessor 1542, by a charter proceeding upon a resignation of the barony of Gairlies, lying within the stewartry of Kirkcudbright, *cum officio Senescallatus*, erected into a lordship ; and he was in possession of exercising a jurisdiction, which he entitled of Stewartry in his books ; but it was said, the particular acts were only such as might be exercised by a Baron Bailie.

The Marquis of Annandale, heritable Stewart of Kirkcudbright, granted to his author 1537, by a charter confirming another some years before, *pleaded*, That Gairlies was part of his stewartry, and could not be erected into another in favour of any person, to the prejudice of the heritable Stewart's prior rights. One stewartry could not subsist within another, as a stewartry might within a shire ; and he was in constant use of accounting in Exchequer for the blench-duties of the Earl's barony of Gairlies, and had also summoned the inhabitants thereof to attend as jurors at the Justiciary Circuit Courts.

*Fleaded* for Galloway, That the Stewart of Kirkcudbright had never exacted the blench-duties, however he pretended to account for them ; and there was only one instance of his summoning an inhabitant as a juryman, who did not attend : That both rights stood in need of the aid of prescription, which Galloway's had ; and Annandale had no possession over Gairlies ; so that, if he ever had a right, it was lost by the negative prescription : That Kirkcudbright was a proper stewartry, extending over the King's estate comprehending Gairlies ; but the presumption was, that, before the Great Stewartry was