

1756. July 16. Sir ARCHIBALD STEWART, &c. against ANDREW STEWART.

No 35.

A charter of the offices of coroner and serjeant, returned prior to the year 1681, at 40 shillings of old extent, does not entitle to a vote for a Member of Parliament.

AT the Michaelmas head-court for the shire of Lanark, Andrew Stewart claimed to be enrolled as a freeholder. The title he produced was a charter under the Great Seal, with a sasine thereon, both dated in the year 1753; and the subjects contained in this charter are described in the following words: 'Tota et integra hereditaria officia serjeandriæ et coronatoris, et hereditariam gubernationem earundem, per universum dominium et quondam regalitatem de Kilbryde, jacen. in vicecomitat. de Lanark, cum eorundem officiorum proficuis, secundum antiquum morem et consuetudinem, viz. de unoquoque aratro intra dict. dominium dimidium bollæ avenarum; de unoquoque seminante, aratrum non habente, unicam firлотam avenarum; de unaquaque sasina dimidium mercæ vel superiorem tunicam, seu vestimentum, secundum velle recipientis, ex unoquoque domicilio unicum caseum compositum ex lacte unius diei, cum unico denario ex unoquoque amerciamento curiæ, duos solidos argenti.' To verify the old extent, two retours were produced dated in the 1649, in which the *valent* clause is expressed in the following words: 'Et quod dict. officia serjeandi et coronatoris, ac hereditaria gubernatio earundem, per dict. totam regalitatem dict. domiciij de Kilbryde, jacen. ut supra, velut in antiqua consuetudine habentur, valent nunc per annum octo libras monetæ prædict. et tempore pacis valuerunt quadraginta solidos ejusd. monetæ.'

Upon this title Andrew Stewart being enrolled, Sir Archibald Stewart and other freeholders presented a complaint to the Court of Session, insisting upon the following objections. *1st*, That by the act 1681, it is provided, 'That none shall have votes in the election of commissioners for shires, but those who at the time shall be publicly infeft in property or superiority and in possession of a forty-shilling land of old extent; or where the old extent appears not, shall be infeft in lands liable in public burdens for his Majesty's supplies for L. 400 of valued rent;' and thence inferring, that Mr Stewart, infeft in an heritable office only, and not in land, is not entitled to be a freeholder; *2d*, That the office, independent of the fees, is a subject not capable of valuation, the extent must be understood to relate to the fees only. And it being instructed, that the fees were dismembered, what remained with Mr Stewart, if any, could not bear an extent of forty shillings.

To the *1st*, it was *answered*, That the King's vassals in general, whether holding lands or offices, were bound to give attendance on Parliament. And, to the *2d*, That the office itself was extended. And it was endeavoured also to be made out, that none of the original perquisites were alienated, but only some perquisites gifted afterward to the office by John Cumming Lord of Kilbryde.

The matter of the greatest importance insisted on by the complainers is, that none but those who hold land of the Crown are entitled to elect or be

ected members of Parliament. By the act 114th, Parl. 1587, none have right but who have a forty-shilling land holding of the King. By the act 18th, Parl. 1641, the fees to the Members of Parliament are proportioned upon the whole heritors holding of the King or Prince, according to the extent of their land or rents. By the act 35th, Parl. 1661, beside the heritors of a forty-shilling land, heritors who formerly held of bishops, and now of the King, shall be qualified to vote, provided their land rent amount to 10 chalders of victual. Then follows the act 1681 above-mentioned, confining the privilege to those who hold land of the King. And, *lastly*, By act 11th, Parl. 1690, for an additional representation of the larger shires, it is taken for granted that none but landholders have the privilege.

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THE LORDS found Andrew Stewart not entitled to be enrolled, and ordained his name to be expunged out of the roll.

*Fol. Dic. v. 3. p. 406. Sel. Dec. No. 110. p. 156.*

\* \* \* This case is reported in Faculty Collection :

1761. *January 14.*—ANDREW STEWART having been enrolled at the Michaelmas head-court in Lanarkshire, upon a charter of the offices of coroner and serjeant within the lordship and barony of Kilbryde, and retoured prior to the year 1681, at 40 shillings of old extent, Sir Archibald Stewart and other freeholders complained to the Court of Session.

Andrew Stewart produced, in support of his title, a grant, so far back as the year 1397, whereby James Prince of Scotland, as Steward of the Lordship and barony of Kilbryde, granted these offices, in fee and heritage, to William of Lickprevick, armour-bearer to his Highness. The charter was in the following words: ‘ Sciant præsentis et futuri, nos Jacobum senescallum dominiæ baroniæ de Kilbryde, dedisse, concessisse, et hac præsentis carta confirmasse, dilecto Armigero nostro Gulielmo de Lickprevick, filio quond. Joannis de Lickprevick, officium serjandi, et hereditariam gubernationem ejusd. per totam regalitatem dominiæ de Kilbryde, velut in antiqua consuetudine habetur in feodo et hereditate in perpetuum, secundum infeodationem, donationem, et concessionem Dom. Joannis Cumyne quond. Domini de Kilbryde, viz. infeodavit, concessit, et donavit, de omni aratro infra dictum dominium, dimidiam bollam avenarum, de omnibus seminantibus non habentibus aratrum, firiotam avenarum, de omni sasina dimidiam marcam, vel superius vestimentum, secundum velle recipientis, de omni domicilio caseum compositum de lacte unius diei, cum singulo denario; et de omni amerciamento curiæ duos solidos argenti; insuper, et officium coronatoris ejusdem dominiæ, cum omnibus pertinentiis et articulis sibi juste pertinent. et libertatibus quibusque: Tenend. et Habend. dicta officia serjandi et coronatoris dicto Gulielmo, hereditibus suis, et suis assignatis, de nobis, et heredibus, assignatis, et successoribus

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‘ nostris quibuscunque ; cum omnibus commoditatibus, eschetis, libertatibus, et  
 ‘ asiamentis, ac justis suis pertinen. quibuscunque, tam non nominatis quam  
 ‘ nominat. ad dicta officia serjandi et coronatoris spectan. seu quovis modo spec-  
 ‘ tare valen. in futurum, etiam in quo quidem officium serjandi antecessores  
 ‘ dicti Gulielmi de Lickprevick feofati et vestiti decesserunt : Et nos vero, dic-  
 ‘ tus Jacobus, heredes nostri, assignati, et successores nostri quicunque, dicta  
 ‘ officia, ut præmittitur, dicto Gulielmo de Lickprevick, heredibus suis et assig-  
 ‘ natis, contra omnes mortales warrantazibimus, et quietabimus, et in perpetuum  
 ‘ defendabimus.’

Mr Stewart also produced several retours which agreed with each other. One of them run in these words : ‘ Quod dicta Elizabetha Lindsay obiit ulti-  
 ‘ mo vestita et sasita in officiis serjandi et coronatoris, et hereditaria governa-  
 ‘ tione earundem, per totam regalitatem domini de Kilbryde, &c. ; et quod  
 ‘ dicta officia valent nunc per annum octo libras, et valuerunt tempore pacis  
 ‘ quadraginta solidos ; et quod tenentur per servitium wardæ et relévii.’

From thence Mr Stewart *contended*, That as these were proper feudal offices, granted in fee and heritage, held by the tenure of ward and relief, and both the old and new extent to the legal amount verified by retours prior to the 1681, as all military tenants holding of the Crown were originally obliged to attendance in Parliament, and as the later statutes made no alteration with respect to the nature of the subjects which should entitle to vote, but only modified their value, he was entitled to be enrolled.

*Objected*; *imo*, Where offices were given in fee and heritage, the natural obligation upon the vassal was, only to perform faithfully the duties of the office, that is, the service of it ; but not to give attendance in Parliament, unless it was either implied in the nature of the office, or provided in the charter. It is absurd to suppose, that the heritable offices of gaoler to a particular prison, of coroner to a petty barony, or of cook to his Majesty, obliged the holders of all these offices to attendance in Parliament.

*2do*, Heritable offices are not lands, in terms of the act of Parliament 1681. The Court interprets this statute strictly, so as not to comprehend other heritable subjects, such as rights of annualrents or feu-duties, to which the word land applies as properly as it does to heritable offices.

*3tio*, The act 1681 requires that the voter should be in possession of a 40 shilling-land of old extent ; but, as the office has been in desuetude for centuries past, the claimant cannot subsume that he is in possession.

THE LORDS ordered Mr Stewart to be struck off from the roll.

For Objectors, *Advocatus, Macqueen.* Alt. *Lockhart, Johnston, J. Dalrymple.* Clerk, *Home,*  
*J. M.* *Fac. Col. No 3. p. 5.*

\* \* \* See No 28. p. 8599.