BEFORE THE LORDS' COMMITTEE FOR PRIVILEGES.

DUKEDOM OF MONTROSE,

OF THE KINGDOM OF SCOTLAND—CREATED IN 1488.

JAMES EARL OF CRAUFURD AND BALCARRES, LORD LINDSAY, &c.,	CLAIMANT.
HIS GRACE JAMES DUKE OF MONTROSE,—A DUKE OF GREAT BRITAIN, BY CREATION OF QUEEN ANNE, IN 1707,	OBJECTOR.

1851.
14th April.

In Peerage cases objectors or contradictors may intervene, although they do not themselves claim the dignity in question.

They are not, however, let in as of course, but on grounds stated and established.

In judging of those grounds, the Lords exercise a large discretion.

Disturbance of the order of precedence in the Peerage has been repeatedly held a sufficient ground to admit an objector.

When the petition of a person craving leave to intervene as an *objector* is appointed for argument, the counsel for such person have the right to begin.

BY Charter of James III., dated the 18th of May, 1488, his Majesty, upon a recital of the uniform loyalty and eminent services of David Earl of Craufurd, Lord Lindsay, created him Duke of Montrose, granting to him the capital, messuage, or castle of Montrose, the ancient burgh and port thereof, and the castle of Kinclaven, which the King by his said charter united and incorporated in free dukedom to be holden by the said David Earl of Craufurd, Lord Lindsay, and his heirs, in perpetuity.

David Earl of Craufurd, Lord Lindsay, thus elevated to the ducal dignity, died about the year 1496. His earldom and barony descended upon his son, and passed to his subsequent heirs in the legal course of succession. But his dukedom was permitted to slumber for nearly four centuries, no one having ever assumed or claimed it till the institution of the present proceedings.

1850.
25th February.

On the 25th of February, 1850, James Earl of Craufurd and Balcarres presented his petition to her

DUKEDOM OF MONTROSE.

EARL OF CRAUFURD, &c. *v.* THE DUKE OF MONTROSE.

Majesty Queen Victoria (*a*), praying to have it declared and adjudged, that, under the above ancient charter, he was entitled to the honour and dignity of Duke of Montrose, and this petition, having been in the usual manner referred to the House of Lords, was by their Lordships referred to the Standing Committee for Privileges.

11th June.

On the 11th of June, 1850, James Duke of Montrose presented his petition to the House, praying that he might have leave to be heard before the Committee for Privileges, "in opposition to the claim of James Earl of Craufurd and Balcarres; and that he might also have leave to lodge a case, and reasonable time for researches and investigations."

On the same day, the Earl presented his petition to the House, praying that "no order should be made on the petition of the said James Duke of Montrose."

Both these petitions were referred to the Committee for Privileges.

(*a*) Questions of peerage have in all ages been subject to the immediate Jurisdiction of the Crown. At a very remote period, the usual practice in England was to refer such questions to the Court of the High Constable and Earl Marshal, there to be determined according to the Rules of Chivalry. As early, however, as the 11 Hen. 6 (1432), we find the House of Lords called upon to assist the Crown in disposing of peerage controversies.—Hale's Jurisdiction of the Lords, p. 105.

When a peerage is to be claimed, the course of proceeding, according to the practice now established, is to present a petition to the Queen, through the office of the Home Department. By her Majesty the petition is referred to the Attorney-General. If the claim be clear, he will report that her Majesty may, if she so please, recognise it; if it be doubtful, he will recommend that her Majesty refer it to the House of Peers; and, when it is so referred, the House again refers it to the Standing Committee for Privileges. On the 27th April, 1808, upon an address from the House of Lords, (see Journals), his Majesty gave directions that "one or more of the Heralds of the College of Arms should attend, and assist the Attorney-General from time to time in all inquiries that might be thought necessary upon occasion of any petition which his Gracious Majesty might be pleased to refer to the House touching any title, dignity, or honour of the peerage."

1851.
10th February.

In the beginning of the following Session, the Earl presented his petition, praying their Lordships to determine whether the Duke should be permitted to oppose the petitioner's claim; and upon this preliminary question the petitioner asked leave (which was granted) to lodge a printed case and to be heard by counsel.

So, on the other hand, the Duke presented *his* petition, also praying leave (which was granted) to lodge a printed case, upon the same preliminary question, and to be heard by counsel.

14th April.

Under these circumstances, the House made an order that the Committee for Privileges should meet, and that notice should be given to the Attorney-General and the Lord Advocate (*a*). Accordingly, the Committee assembled; Lord Redesdale occupying the chair; and several other Peers (*b*) being present, including the Lord Chancellor (*c*), the Lord Chief Justice of England (*d*), Lord Brougham, and Lord Cranworth.

The question appointed for argument was, whether the Duke, whose dukedom was a dukedom of the United Kingdom of Great Britain, created by Queen Anne in 1707, should be allowed, not as a claimant but simply in the character of an *objector*, to oppose the Earl's claim to a dukedom of the kingdom of Scotland, created by James III. (*e*).

(*a*) The Attorney-General and the Lord Advocate attend on behalf of the Crown, the fountain and protector of honour.

(*b*) The number of Peers required to constitute a Committee for Privileges is *seven*. It is a Committee of the whole House, but proceeds as a judicial tribunal.

(*c*) Lord Truro. (*d*) Lord Campbell.

(*e*) The dukedom claimed is only five years later than that of Norfolk, the premier dukedom of England, which was created in

DUKEDOM OF MONTROSE.

EARL OF CRAUFURD, &c. *v.* THE DUKE OF MONTROSE.

The *Attorney-General* and the *Solicitor-General* (*a*) attended the Committee on behalf of her Majesty.

Sir *Fitzroy Kelly*, Mr. *Bethell*, the Hon. *John Stuart Wortley*, Sir *John Bayley*, and Mr. *Riddell*, for the Earl, claimed the right to begin.

Mr. *Rolt*, Mr. *Hope*, and Mr. *Cosmo Innes*, for the Duke, contended that as his Grace's petition raised the question appointed for argument, it was in the ordinary course that his counsel should open it.

Lord REDESDALE: The order of the House is distinct,—"to hear counsel upon the preliminary question." That question must be opened by the party raising it. The Duke's counsel, therefore, will begin (*b*).

Mr. *Rolt* therefore proceeded: The dignity claimed by the Earl has the same name and sound as that enjoyed by the Duke. [Lord CAMPBELL: The question is as to a right to a peerage, not to a "name" or "sound."] The Committee has to consider, not whether a new peerage is to be introduced into the House, but whether the Earls of Crawfurd shall be allowed to call themselves Dukes of Montrose? We admit that two peerages having the same name may co-exist. We admit also that we have no right to any dukedom granted to the Crawfurd family; and it is equally clear that the Crawfurd family have no claim to the dukedom of Montrose, granted to the

1483. The creation of the dukedoms of Rothsay and Albany, in favour of the son and brother of King Robert III., were the earliest examples of this title in Scotland, as the ducal dignities conferred on the sons of Edward III. were in England; the time of the innovation in both countries pretty nearly corresponding.

(*a*) The Solicitor-General for England attended in this instance in place of the Lord Advocate (Rutherford), who had just accepted the office of a judge in the Court of Session.

(*b*) This ruling is in conformity with the practice established when counsel are heard upon a preliminary objection to an appeal. —See *suprà*, p. 36.

Grahams, whom we represent. [Lord CAMPBELL: The two are wholly distinct.] [LORD CHANCELLOR: The petition of the Duke puts his case on the ground of *inconvenience* and *precedence.*] The House on a variety of grounds, and certainly on the ground of inconvenience amongst others, had often been induced to hear parties in opposition to peerage claims where questions of legal right did not arise. And although there may be distinct peerages under the same name or title, we submit, with some confidence, that such things are rather anomalous, and have been generally avoided. But we stand on the higher ground of *precedence;* and, we are supported by many authorities, which show that the House will allow a contradictor to intervene, although claiming no interest whatever in the peerage in question. Thus, in the seventeenth century, Lord Broke of Beauchamp, who had no pretension to the peerage of Willoughby de Broke, was nevertheless permitted to come in as an opponent of Sir Richard Verney, who claimed it (*a*). [Lord CAMPBELL: In that case a most important general question, as to the descent of baronies by writ, was involved.] The *Roxburgh Peerage case* is the only instance that can be found against the right to be heard. There several precedents (*b*) were cited, to

(*a*) Cruise on Dignities, 196, 320. 6 Collins's Peerage, 404.

(*b*) 27th June, 1808. The Lord Walsingham reported from the Committee appointed to search for precedents touching the hearing of persons not themselves claiming dignities (but the title to which dignities was in question), against persons claiming the same, that the Committee had found the following precedents, viz.:—

On the 16th of March, 1769, a petition of James Wemyss, Esquire, for himself, and on behalf of Lady Elizabeth his wife, sister of William, late Earl of Sutherland, and of their infant children, was presented and read; praying, That leave might be given him to be heard by counsel on behalf of himself, his wife Lady Elizabeth, and their infant children, in the question concerning the title and dignity of Earl of Sutherland, now standing appointed to be heard before

DUKEDOM OF MONTROSE.

EARL OF CRAUFURD, &c. v. THE DUKE OF MONTROSE.

show that a party may oppose without claiming—and Mr. Bellenden Ker's application was refused on special grounds. But in general the rule of the House is to hear a Contradictor. And in some instances the House, *ex proprio motu*, has ordered notice to be served on parties who did not themselves come forward, but

the Committee for Privileges; which petition was referred to the Committee for Privileges, with liberty for the petitioner to be heard.

On the 4th of April, 1770, a petition of Constantine Lord Mulgrave, of the kingdom of Ireland, was presented and read; praying, That he might be heard by his counsel before the Committee of Privileges, to whom was referred the petition of the Earl of Anglesea, praying a writ of summons to Parliament; which petition was referred to the Committee for Privileges, with liberty for the petitioner to be heard as desired.

On the 13th of May, 1794, a petition of James Johnstone, Earl of Hopetown, was presented and read, taking notice of the petition of Sir James Johnstone, Baronet, claiming the title of Marquis of Annandale, and other titles therein mentioned; and praying, That he might have leave to appear for his interest, by his counsel, when the matter of the said petition and claim of Sir James Johnstone came on to be heard, and leave was given his Lordship to be heard as desired.

On the 2nd of March, 1797, a petition of Harriet, commonly called Lady Harriet Don, wife of Sir Alexander Don of Newton Don, Baronet, and eldest sister of John, late Earl of Glencairn, deceased, was presented and read, taking notice of the petition of Sir Adam Fergusson, Baronet, claiming the dignity of Earl of Glencairn; and praying, That she might be heard by her counsel in support of her interest; which petition was referred to the Committee for Privileges, with liberty for the petitioner to be heard as desired.

On the 27th of April, 1797, a petition of Sir Walter Montgomery Cunninghame, of Corsehill, Baronet, was presented and read, taking notice of the said petition of Sir Adam Fergusson; and praying, That he might be heard by his counsel in support of his interest; which petition was referred to the Committee for Privileges, with liberty for the petitioner to be heard as desired.

28th June, 1808. The order of the day being read for taking into further consideration the petition of Mr. Bellenden Ker, in relation to the Roxburgh peerage; and also for taking into consideration the Report from the Committee: Resolved, that Mr. Bellenden Ker is *not* entitled to be heard.

whose precedence as Peers might be affected (*a*). There was great utility in this practice; for the first object of the House was the ascertainment of truth. In the *Marchmont Peerage* (*b*) Sir *Hugh Campbell* obtained leave to lodge a printed case, on the ground that he could put their Lordships in possession of important information. Now we pledge ourselves to assist the House and the Law officers of the Crown; and we trust that your Lordships will think it right to permit us to be heard, or, at all events, to lodge a printed case.

The Committee, without requiring further argument, were of opinion that applications of this sort had been at all times dealt with according to a large discretion, having regard to the circumstances of each case. In the present instance their Lordships seemed at first disposed to hold that the purposes of justice might be satisfied if the Duke were to communicate to the Law officers of the Crown any information he possessed, with a view to its being submitted by them in due form to the Committee (*c*). But it was ultimately resolved—

(*a*) See the proceedings on the claim to the Sutherland Earldom, Lords' Journals; Robertson's Peerage Proceedings; Riddell's Scotch Peerages, pp. 830, 831, where he says that "utter strangers to the succession" might intervene in respect of their precedency.

(*b*) Journals, 8th July, 1842.

(*c*) Thus Lord Brougham observed that "there could be no doubt of the large discretion which the House possessed of admitting parties standing more or less on the same ground as the present noble Petitioner. That it had exercised that discretion in certain cases was equally clear. If the noble Petitioner had peculiar information, he might communicate it to those who aided their Lordships on behalf of the Crown. And in this way it would be sufficiently introduced to the notice of the Committee without admitting the Duke as an actual Contradictor." Lord Campbell, too, remarked that "the noble Duke in his petition did not allege that he had any peculiar means of information (as Sir Hugh Campbell had done with regard to the *Marchmont case*), and therefore he

DUKEDOM OF MONTROSE.

EARL OF CRAUFURD, &c. v. THE DUKE OF MONTROSE.

That so much of the noble Duke's petition as sought leave to lodge a printed case in opposition to the Earl's claim upon the merits—should be granted—without prejudice to his Grace being afterwards heard by counsel, if their Lordships, on inspecting the case, should think fit so to order.

thought the interests of justice would be best promoted by not admitting a Contradictor, because, whatever information he might possess, might be handed over to the officers of the Crown, who would, doubtless, most gratefully receive it, and bring it more effectually before their Lordships than if a third party were allowed to interpose."

LAW, HOLMES, ANTON & TURNBULL.—SPOTTISWOODE, & ROBERTSON.