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was necessarily consequential to a conjunct gift ; and if survivances were once allowed, there might be an entail of Lords of Session, clerks, &c. for 100 years to come, which was as unjust as the granting heritable offices, which was reprobate by the 44th act 1455 : And by the canon-law *expectativa beneficiorum* were condemned, *et beneficium non vacans non poterat conferri*; and all gifts of offices behoved to express the *modus vacandi*. THE LORDS unanimously found Mr James had no legal right by that gift, and therefore preferred the Register and his deputes ; and found there was a vacancy by Charles's death. THE LORDS would gladly have inclined to favour Mr Oliphant, if law would have allowed it.

Fol. Dic. v. 2. p. 291. Fountainhall, v. 1. p. 578.

1701. February 18.

TEMPLE against WALLACE.

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What the responsibility of the Clerks of the Bills relative to receiving caution ? The consequence of the interference of the Court in that matter ?

ARNISTON reported Mrs Martha Temple, relict of Mr Edward Ruthven, against Hugh Wallace of Ingliston, and Murray of Spot and his Lady. Mrs Martha being provided to a jointure of L. 200 Sterling, out of the lands of Corstorphin, by way annuity ; for her surer payment, she transacted with Ingliston, and quit it for L. 180 Sterling yearly, and when she charges him on his bond, he suspends, that it is arrested in his hands. *Answered*, They are only laid on upon depending processes against her, at the instance of John Baillie, apothecary, the Laird of Spot, Bailie Brand, and other creditors of her husband's, and so are loosable on caution, and she had offered sufficient caution, and yet the Clerk to the Bills had refused it. THE LORDS, to try if the claims on which these processes were founded were clear and liquid debts, allowed the arresters to be cited *incidenter* in this suspension ; and after hearing them, it being urged that she might have up her money on the caution offered, viz, Alexander Bruce, her agent, and Sir William Bruce as her attestor, the LORDS considered that they could not *hoc ordine* discuss the several arresters' interests, they not being cited to that effect, but only to clear the LORDS how far the caution might be receivable or not, and that it might be of dangerous consequence to interpose and judge as to the sufficiency of caution offered, that being the peculiar province of the clerks, yet if they should refuse cautioners beyond exception, no doubt the LORDS had power to over-rule them : Therefore they ordained the cautioner and his attestor to be received, and the consigned money to be given up to Mrs Martha. THE LORDS had, in July last, declared the caution offered by Colonel Erskine sufficient, but that was in the roup of the Earldom of Kincardine, where the creditors had the estate in security as well as the caution ; and the LORDS were remembered that for loosing an arrestment which was laid on upon a decret against Hay of Park, and allowing it to be done on caution, within these seven years, paid the debt to the

party and took their hazard of an assignation to the creditor's right, as being loosed contrary to law. Yet they decided in this case, as is set down, *supra*.

Fol. Dic. v. 2. p. 293. Fountainball, v. 2. p. 109.

1705. July 17.

JOHN Duke of ATHOLE, JAMES Earl of SEAFIELD, and JOHN RICHARDSON, Writer in Edinburgh, *against* The Earl of EGLINTON.

JOHN RICHARDSON having, *in anno* 1696, obtained a gift of the office of Sheriff-Clerk of Renfrew from the Duke of Athole and Earl of Seafield, then Secretaries of State, and having protested for damages against Robert Semple of Fulwood, Sheriff-Depute, for refusing to admit him, and to deliver up the records; he pursued the Earl of Eglinton, Sheriff-Principal, the said Sheriff-Depute, and Robert Alexander, who exercised the clerkship, to receive him to the office, to deliver up the records, and to make payment of the emoluments of the office since the year 1696.

Alleged for the Earl of Eglinton; The Secretaries' gift cannot be regarded, because he, the Earl of Eglinton, as Heritable Sheriff of the shire of Renfrew, hath power to name the Sheriff-Clerk as a pertinent of his office, and hath granted a commission to Robert Alexander, who officiates as clerk.

Answered for the pursuers; Sheriff-Clerkships, as all other offices belonging to the Crown, are at the Secretary's disposal, unless the Heritable Sheriff's charter doth bear a special power to dispose of the clerk's office, which the Earl of Eglinton cannot pretend to be in his. Nor is there any difference as to the question and power of naming clerks, betwixt heritable and temporary-sheriffs; and as the latter cannot nominate without a special grant from the Crown, neither can the former.

THE LORDS found the Secretaries of State have power to nominate Sheriff-Clerks, when the Sheriffs, as in this case, have no such power expressed in their charters or heritable rights: And decerned Richardson to be received in the office, reserving to him action for the bygone profits as accords.

Fol Dic. v. 2. p. 291. Forbes, p. 27.

* * * Fountainhall reports this case :

LORD PRESTONHALL reported the Duke of Athole, Earl of Seafield, and John Richardson, writer in Edinburgh, against the Earl of Eglinton. The Sheriff-clerkship of Renfrew falling vacant in 1696, by the death of Greenlees, the former clerk, John Richardson applies to the Earls of Tillibarden and Seafield, then secretaries of state, and, for onerous causes, obtains a gift from them of the said office; and requires Robert Semple of Fulwood, the Sheriff-depute, to receive him to the office, and deliver him up the records; and, on his refusal, he

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Sheriff Clerks may be named by the Secretaries of State.