

No 153.

The said LORDS authorised and empowered the petitioners to exercise the office of Sheriff-deputes within the sheriffdom of Edinburgh, till a Sheriff-principal be appointed by the Crown, and they be superseded; and dispense with the reading hereof in the minute-book, and ordained the same to be inserted in the books of sederunt.

Acts of Sederunt, p. 382.

1745. *January 23.* EARL of DUMFRIES, Petitioner.

No 154.
The Court
appointed an
interim Sheriff-depute.

UPON a petition from William, Earl of Dumfries, shewing, That the deceased Colonel William Dalrymple of Glenmuir, the petitioner's father, being heritable Sheriff of the Sheriffdom of Clackmannan, stood infest as such: That, since his death, which happened upon the 30th day of November last, the office of Sheriff has been vacant, to the great prejudice of the lieges: That the petitioner has right to the lands and barony of Clackmannan, and to the heritable office of Sheriff of the same, not only as heir to, but as having right by disposition from his said father; but as he has not hitherto had time, either to expedite a service as heir, or obtain a charter under the Great Seal, and be thereupon infest, till which be done, he cannot appoint a Sheriff-depute to administrate justice to the lieges, and do the other necessary parts of the office, such as calling an inquest for striking the fiars, summoning the jury before the Circuits of the Justiciary Courts, and making the proper returns to the Justiciary Court at Edinburgh, and obeying any orders that may be issued from the Court of Exchequer; the petitioner is advised, that the Lords of Council and Session are in use, during such vacancies of any public office, to authorise a fit person to act in these offices in the interim; and as Robert Rollo, who was appointed depute under the petitioner's father, acted for several years in that capacity, with a fair character, and, in the petitioner's opinion, is a fit person for the office; craving therefore, it might please their Lordships, to authorise and appoint the said Robert Rollo, the former Sheriff-depute, to exercise the office of Sheriff-depute of the said shire of Clackmannan, with power to him to hold Courts from time to time in the ordinary form, to hear and decide in all causes competent before the Sheriff, and jurisdiction thereof; and to nominate and appoint deputies, in case of his necessary absence, procurator-fiscals, and serjeants of court, to issue precepts, summon juries, and generally to do all and sundry other things pertaining to the said office and jurisdiction, as freely, in all respects, as any other his predecessors in the said office have done, and that ay and until the petitioner make up his titles, and be infest in the said office of principal Sheriff, and appoint a new depute, and other members of court, or until further orders be issued from their Lordships. The said Lords authorise and appoint the above Robert Rollo, to exercise the office of Sheriff-depute of the said shire of Clackmannan, and that ay and until the petitioner is infest, and appoints another

Sheriff-depute, or that this warrant is recalled by this Court; and ordain the same to be recorded in the books of sederunt, and dispense with the reading hereof in the minute-book.

No 154.

Acts of Sederunt, p. 387.

1746. July 1.

JEAN DENHAM and WILLIAM WALLACE her Husband for his Interest, Supplicants.

JEAN DENHAM wife to William Wallace writer in Edinburgh, had formerly been married to Gilbert Stewart of Ballouchtoll, by her contract of marriage with whom she was entitled to a liferent out of certain tenements in Edinburgh, and wanting to be infeft therein, she, with concurrence of her present husband, presented a bill in Febrary 1746 to three Ordinaries on the Bills, as the Court of Session was not then sitting, craving, that in default of a Magistracy of Edinburgh, occasioned by there having been no election at Michaelmas last, the city being then in the power of the rebels, the Lords would authorise some person to receive the resignation, and grant infeftment thereupon, in terms of the procuratory contained in her contract of marriage, and grant warrant to the city-clerks to expedite and record the infeftment, as the law directed.

No 155.
A Bailie in that part was appointed to receive a resignation, and grant infeftment within burgh, there being a vacancy of Magistrates.

This bill was not proceeded on till the Session, when it was reported; and a difficulty occurred, how far it was in the power of the Court to supply the defect; for though in other cases, where an office of the law had been vacant, the Lords had supplied it, as naming a Sheriff, yet here the defect was somewhat more; and it was prayed they would create a superior, that he might give infeftment.

Pleaded for the petitioners, That by the spirit of the law, wherever any person was entitled to an infeftment, there was a method for his obtaining it, notwithstanding the superior's refusal, or any defect in his right; he might be charged with horning, or if he was not infeft, the vassal might apply to the next superior.

As this petitioner wanted nothing but a solemnity to complete her right, it would be very hard if it were not in the power of the Supreme Court of the nation to give her remedy.

The Lords had been in use to name Sheriffs, when they were wanted for infeftments; and the present case did not differ from that, for Magistrates of towns were no more than Commissioners for resignations, as in the hands of the King, who was the immediate superior of burgage holdings, as appeared by the stile of resignations, which run in these terms, 'I, by these presents, make, constitute, and appoint ——— my lawful and undoubted procurator for me, and in my name lawfully to resign. &c. as I, by these presents, resign, surrender, and *simpliciter* upgive and overgive all and hail, &c. in the hands of