

No 342. by a charter of *novo-damus*; the LORDS found this grant did not fall under the sanction of the statute 1455, forbidding the grants of heritable offices.

*Fol. Dic. v. 3. p. 363. D Falconer, v. 1. No 232. p. 319.*

1748. February 5.

The DUTCHESS of GORDON *against* The KING'S ADVOCATE.

No 243.

Recompence due for a grant of bailiary over the grantee's lands, lying in a churgn regality, on which there had been no possession for 40 years.

THE Dutchess Dowager of Gordon claimed the Bailiary of Regality over her own lands of Prestonhall, in virtue of a charter 1688 from the Archbishop of St Andrew's, of the lands, with the office, described as lying within the regality of St Andrew's, proceeding upon a resignation.

*Objected*, That there had been no exercise of jurisdiction upon this grant of Bailiary.

It was considered, That the grant was to a proprietor over only his own lands; so that there were no heritors who could have prescribed an immunity. And the only effect of the Bailiary being lost, would be the falling back of the estate under the general jurisdiction of the Regality of St Andrew's; which could not be pretended by the Lord of Regality in this case, or the like, where the lands and office were contained in one grant for one general *reddendo*, which the Lords had constantly accepted for both.

THE LORDS therefore sustained the claim.

*Fol. Dic. v. 3. p. 364. D. Falconer, v. 1. No 236. p. 321.*

1748. February 12. BAILIE and MONRO *against* The KING'S ADVOCATE.

No 344.

No recompence found due to the Bailie and Clerk for life of a regality, by grant from the fiar, who had a gift of the liferenter's escheat, but was himself attainted after 11th Nov. 1746, for treasons committed before that time.

EVAN BAILIE, as Bailie, and Alexander Monro, Clerk for life of the Regality of Lovat, by commission, 21st February 1738, from the late Lord Lovat, claimed a recompence for their respective offices.

*Objected*, The statute makes no provision in favour of Bailies for life.

*2dly*, To both claims, Lord Lovat's title to the estate of Lovat was made up of a gift of the liferent escheat of Alexander M'Kenzie of Fraserdale, in whom was vested the liferent of the said estate and Regality, and of legal diligence, whereby he had denuded Hugh Fraser, the fiar thereof; but as the liferenter was alive at the date of the commission, and still so, he could not grant any in virtue of the right of fee, and the jurisdiction did not fall under liferent escheat, nor, if it did, could be understood to be comprehended under the general gift, which did not mention it; but it was in the Crown either as not gifted, or as having remained with Fraserdale after the falling of his escheat, until it was forfeited by his attainder for the rebellion in 1715.