

1802. *February 27.* EARL of KINTORE *against* LYON and Others.

A DISPUTE having arisen between the Earl of Kintore and the Bailies of the burgh of Inverury, on account of their pulling down a rail which the Earl had erected upon the banks of the Don, he brought a complaint before the Sheriff of Aberdeenshire, accusing the Magistrates of a breach of the peace. This rail had been erected within the limits of the royalty of the burgh, by Lord Kintore, to prevent an embankment of Earth upon his adjacent property from being injured. The Magistrates ordered it to be taken down, as it hindered the inhabitants of the town from that access to the river to which they conceived themselves entitled.

The Sheriff found, that as the ground on which this rail had been erected was within the freedom of the burgh, and as it had been removed by the authority of the Magistrates, the action was not competent before his Court, and dismissed the complaint.

Upon this, the Earl presented a bill of advocation, and the LORD ORDINARY (12th February 1802) remitted to the Sheriff 'to find the action competent before his Court, and to proceed to the determination thereof as he shall see just.'

The Magistrates presented a petition to the Court against this interlocutor, upon the grounds that the Sheriff had no power of judging with respect to encroachment within the royalty of the burgh; Magistrates of Stirling against the Sheriff, December 14. 1752, No 302. p. 7584.

But their petition was refused, without answers, upon the principle, that the Magistrates were themselves parties in the cause, and could not, with propriety, judge in it, while the Sheriff's jurisdiction admitted of no doubt.

Lord Ordinary, *Polkemmet.*

For Magistrates, *Lumsden.*
Clerk, *Menzies.*

Agent, *W. Beveridge, W. S.*

Fac. Col. No 27. p. 53.

No 377.
The Sheriff has a jurisdiction within burgh in cases where the Magistrates are parties.