1802.

[Mor. App. College of Justice, No. I.]

SOCIETY OF WRITERS TO THE SIGNET, &c. — The KEEPER, COMMISSIONERS, and whole SOCIETY of WRITERS to the SIGNET, *Appellants;*

v.

SOCIETY OF SOLICITORS, &c. — The SOCIETY of SOLICITORS in the COURT of SESSION, COURT of COMMISSION of TEINDS, and HIGH COURT of JUSTICIARY, *Respondents.*

House of Lords, 7th April 1802.

EXCLUSIVE PRIVILEGES OF CLERKS TO THE SIGNET—REGULATIONS.—The Writers to the Signet having claimed exclusive privilege in certain departments of business before the Court, enacted certain regulations increasing their fees, and, to protect their exclusive privileges, the Society of Solicitors presented a petition and complaint to the Court, complaining of these regulations. Held, in the Court of Session, that the Writers to the Signet had an exclusive privilege of libelling and preparing privileged summonses which pass on a bill, but that they had no exclusive privilege of libelling ordinary summonses which do not require to be passed on a bill; and that they could not prohibit their members from signing such summonses. Also held, that bills of suspension and advocation may be signed by a practitioner before the Court, whether Writer to the Signet or Agent. Affirmed in the House of Lords.

The Society of Writers to His Majesty's Signet having claimed exclusive privilege of libelling all summonses, and of signing all bills of suspension and of advocation, and also of charging and exacting of fees therefor, according to a certain rate fixed by them, as well as the fees paid on these letters at the Signet Office and Bill Chamber respectively; they enacted several bye laws, having for their object, the confining the whole business to themselves. In particular, they enacted, 1. That no letters should pass the Signet gratis, which had before been the case; and, 2. That no member of the Society should subscribe bills, summonses, letters, precepts, retours of service, &c. for any other, but such only as have been drawn and written by himself.

The respondents presented a petition and complaint to the Court against these regulations, as having in view the entire exclusion of the Society of Solicitors from the business of the Court; and, besides, that they had enacted regulations in regard to matters which were entirely beyond their power and jurisdiction. More particularly they complained,

1. Against their right to increase their Signet letter fees, which was a matter only under the control of Parliament or the Court. 2. That, as agents and solicitors admitted by the Court, they had an equal right with the clerks to the Signet, to libel the summonses in those cases where they were employed by the pursuer; and, 3. That they had the same right of drawing bills of suspension and advocation; and, 4. That the writers to the Signet had no right to prohibit solicitors from entering into partnership with agents or others not of the Society, so as to carry on such branches of business.

1802.

SOCIETY OF WRITERS TO THE SIGNET, &c. *v.* SOCIETY OF SOLICITORS, &c.

The Lords, of this date, found, "That the Keeper, Com- Jan. 31, 1799.
"missioners, and Society of Clerks to the Signet, though
"entitled to all the privileges of a corporation, have no
"power, by their own authority, to increase their legal or
"established fees, and therefore prohibit and discharge
"them, in time coming, from demanding or taking from the
"complainers, the additional fees attempted to be estab-
"lished by their act and regulation complained of, dated 1st
"February 1796: Find the appellants have the exclusive
"right and privilege of preparing and signing all Signet
"letters, and of signing all summonses passing the Signet;
"but that they have no exclusive privilege to sign or pre-
"pare bills of advocation or suspension: Find, that as they
"are answerable for the form and style of libelled summon-
"ses passing the Signet, they are entitled either to prepare
"or revise them. But find, That they have no right to
"prohibit the members of their society from signing libel-
"led summonses, which may have been written, or drawn, by
"others, upon such members receiving the full fees by law
"exigible by them, and being satisfied that such summon-
"ses are properly framed: Find, that the respondents have
"a right to prohibit the members of their society from enter-
"ing into partnership with agents or others, not of the so-
"ciety, for carrying on any branch of business falling un-
"der their exclusive privilege, as writers to the Signet;
"But find, That the members of the Society may lawfully
"enter into partnership with others for carrying on any
"branches of business separate and distinct from their ex-
"clusive department, as writers to the Signet, and, in so
"far, prohibit and discharge the Keeper, Commissioners, and
"Clerks of the Signet, from enforcing or carrying into exe-
"cution the regulations complained of, dated the 11th day
"of July 1796, and decern." On reclaiming petition, the
Court, of this date, found, "That Bills of advocation and July 2, 1799.
"suspension may be signed by the practitioner, whether

1802.

SOCIETY OF WRITERS TO THE SIGNET, &c. *v.* SOCIETY OF SOLICITORS, &c.

" writer to the Signet or agent, by whom the same are " drawn or presented, but must also have marked upon " them the name of the writer to the Signet by whom the " letters are to be afterwards expede, that the same, if " passed, may be delivered to him by the clerk to the Bills. " Find, That the writers to the Signet have the exclusive " privilege of libelling or preparing privileged summonses, " which pass upon a bill, but have no exclusive privilege of " libelling ordinary summonses, which do not require to be " passed upon a bill, and that they have no right to pro- " hibit the members of their Society from signing any such " summonses, although that part of it, which is called the " libel, may be written or drawn by others, upon receiving " the full fees by law exigible for revising, or framing the " formal part of the summons, and authenticating the same " by their signature; and with these explanations and alter- " ations adhere to the interlocutor reclaimed against."

Feb. 25, 1800. On reclaiming petition, the Lords pronounced this interlocutor, "The Lords adhere to their interlocutor reclaimed " against, and refuse the desire of the petition, with the " following explanations: 1. That the name of the writer " to the Signet, who is to expede the letters upon a passed " bill of advocation or suspension, is only to be marked " upon the bill when it is carried to the Signet office, in " order to have the letters expede. 2. That the exclusive " privilege of the writers to the Signet of libelling and pre- " paring summonses, extends only to those summonses " which cannot pass the Signet without a bill."

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellants.—1. The appellants having resolved to make additions to their charges for Signet letters, they never pretended that they had authority so to enforce such regulations, if unreasonable in themselves, or that in this respect they were subject to no control; but they do contend, under the sanction of repeated practice, and from the reason of the thing, that they have a right to make such regulations binding on their own members, though subject to question from other parties, if by them these be deemed exorbitant. But it is not alleged that the charges here are unreasonable. The right of the Society to make such regulations has long been acquiesced in by the public, and sanctioned by the Court. 2. Their exclusive right, as Clerks to the Signet, to prepare and present bills of advocation and suspension, is clearly established, and existed even before

the institution of the College of Justice. They had the same exclusive privilege of drawing and signing letters of suspension and advocation. Indeed, this exclusive privilege extends to all writs passing the Signet, including summonses; and there is no warrant or authority for making any distinction between privileged and unprivileged summonses. The appellants have quoted authorities, the most direct, in support of their privilege, to libel all summonses. This right has been denied; and, it has been alleged, the exclusive privilege only regards privileged summonses, which pass the Signet on bills, because the style of these being a matter of fixed and settled form, in which it would be dangerous to allow the smallest alteration, and also because a responsibility attaches on the party whose name they bear; but this is pure invention; for the responsibility is the same in both cases, and therefore there is neither reason nor authority for making any distinction between the one and the other. 3. And further, the interlocutor appealed against, in so far as it finds that the Society is not entitled to make regulations to prevent its members from entering into partnership with persons not of the Society, for carrying on branches of business, is erroneous, because, in point of fact, they have made no regulation on that head whatever, and it is extremely problematical whether they ever shall; but, whether they do so or not, does not, and ought not, to fall within the determination of this case, thereby to prejudice such future regulations, if they shall see fit to enact the same. Even supposing that regulation now passed, the respondents could have no interest to complain, because such regulations could be made by the Society of Writers to the Signet only to affect its own members. In so far as it regulates its own members, such an agreement would be both legal and justifiable.

Pleaded for the Respondents.—1. The appellants had no right to increase their fees of their own accord; and the exactions made by them, under their late regulations, were unjust to the respondents, as well as their clients. They had no right to exact such, because the fees exigible by the clerks to the Signet have, from the earliest times, been regulated by Parliament itself. 2. The writing of bills of suspension and advocation is the peculiar business of an agent or solicitor; and the framing and attending to them, in their progress through the Bill-Chamber, are incompatible with the office of a writer to the Signet, which was to

1802.

SOCIETY OF WRITERS TO THE SIGNET, &c. *v.* SOCIETY OF SOLICITORS, &c.

attend at the Signet Office, as a clerk of the Secretary of State, and throw into the form of letters such warrants as are brought to them in the shape of bills. Such was the original duty of writers to the Signet, and therefore they have no exclusive right of writing these bills. 3. The case is still more clear, as to summonses passing the Signet. With the exception of special cases, which require particular application to the Court by bill, the writers have never been in the exclusive right or practice of preparing that part of those writs called the libel. The writing of those summonses, like bills of suspension and advocation, is inseparably connected with the business of the agent and solicitor practising before the Court. They are admitted by the Court under this understanding, and with no such restrictions on their rights as the appellants point at. To hold the reverse, would be to repeal the Act of Sederunt 1754, made by the Court of Session for the encouragement and protection of a body of men, whom, after experience of their services for four score years, the Court had found merited a permanent establishment under the protection of the Court.

After hearing counsel,

EARL OF ROSSLYN said,

" My Lords,

" This is not the first time that the present parties have been before your Lordships, in regard to the matters now at issue between them. The respondents had presented a petition and complaint to the Court of Session, the subject matter of which was, that certain new regulations had been made to their prejudice by the writers to the Signet—a very respectable body. Both these parties were officers of the Court, each in their respective departments. One of the articles of complaint was, that while the fees of the writers to the Signet were regulated by express act of Parliament, they themselves had taken upon them to increase the amount of them.

" They asked time till the then next Session of the Court to answer the complaint. This was granted them, being a matter of course, and well understood; but of necessity, and for the sake of public convenience, the Court made an interdict, suspending the effect of the regulations till the matter was inquired into. Against that interdict, so manifestly just on behalf of all the king's subjects, the appellants presented an appeal, and appeared at your Lordships' bar. Their case, however, was not argued; their counsel saw its impropriety, and the appeal was withdrawn.

" The parties then entered into a discussion of this matter before the Court of Session; and it has been the subject of very laborious inquiry, first, on the part of the writers to the Signet, and afterwards,

of the agents. The result was, that the Court has established certain regulations, so that the business of the Court may be preserved in its due course, without interruption, and these appear to be dictated with great propriety. We have not here a matter relating to the private interests of individuals, but to the regulations of practice in a Court of justice. The impropriety of calling for your Lordships' interference, in a case like this, as far as I know, never occurred before.

"Attempts have been made in this country, at different times, to draw into discussion in one Court, what had been matter of regulation in another. But the moment such a purpose was perceived, it was put a stop to. None of such parties ever fell upon the absurd scheme of calling for the interference of your Lordships in such a case. I am sorry that a different temper prevailed upon the present occasion.

"I know the body of writers to the Signet to be of great respectability; but we are all aware of the warmth and animosity that are apt to arise in discussing rival interests, as in the present case. I must blame the appellants exceedingly for not having obeyed the regulations laid down upon this occasion by the Court; and, to mark the displeasure of your Lordships with their conduct, I move that the interlocutors complained of be affirmed, with £100 costs."

It was accordingly

Ordered and adjudged that the interlocutors be, and the same are hereby affirmed, with £100 costs.

For the Appellants, *Wm. Adam, John Clerk.*

For the Respondents, *Ed. Law, Chas. Hope, Ad. Gillies, Thos. W. Baird.*

SIR ROBERT PRESTON of Valleyfield, *Appellant;*

EARL OF DUNDONALD and his Creditors, and ROBERT WATSON, Common Agent in the Process of Ranking and Sale of his Estates, } *Respondents.*

House of Lords, 13th April 1802.

SUPERIOR AND VASSAL.—CLAUSE OF PRE-EMPTION—REAL OR PERSONAL.—In the original contract of feu between the superior and vassal, there was no pre-emption clause or obligation to give the superior the option of purchasing, in again disposing of the subject; but it was alleged that this was understood, and in a subsequent disposition of the subjects by the vassal to his brother, the latter