

1668. *January 14.*

The BAILIE of the Regality of KILLIMURE *against* BURGH of KILLIMURE.

No 7.

THE heritable Bailie of the regality of Killimure having convened, and amerced persons in the burgh; they suspend on this reason, that the burgh being a burgh of regality, having its own magistrates, inhabitants are only liable to the jurisdiction. It was *answered*, That the burgh's jurisdiction being granted by the Lord of regality, is only cumulative, and not exclusive of the Lord of regality, or his Bailie; in the same way, as the jurisdiction of all vassals is not exclusive of their superior's jurisdiction; for the burgh are vassals holding of him; and therefore *est locus præventioni*, and the first citation, without negligence, is preferable.

Which the LORDS found relevant.

Fol. Dic. v. 1. p. 492. Stair, v. 1. p. 505.

* * * Dirleton reports this case :

1668. *January 15.*—A DECREE at the Procurator Fiscal's instance of the regality of Abernethie before the Bailie of the regality, against the Weavers in the town of Abernethie, for contravening the act 43d Parliament 1661, anent the breadth and bleaching of linen cloth, was suspended upon that reason, that the Bailies within the town of Abernethie, were only judges competent to the inhabitants within the burgh.

THE LORDS found, that the town being only a burgh of regality, had jurisdiction within the same; and the Bailies' jurisdiction is cumulative and not privative, unless they had it expressly by their infestment privative, and that in such cases *locus est præventioni*.

Dirleton, No 131. p. 54.

1673. *February 15.*

The LAIRD of CRAIGIVAR *against* The VASSALS of LINDORES.

No 8.

THE Laird of Craigivar being heritable Bailie of the regality of Lindores, beyond the Kairn of Mount, pursues the vassals for the fines of the head courts, from which they were absent; they having *alleged* that Craigivar having disposed their lands to them, to be holden of the King for all right that he had, and they being now the King's vassals, they were thereby exempted from the regality, as effectually as if he had renounced the right of regality as to their lands, or given them right to be Bailies of regality as to their own lands.

THE LORDS repelled the allegiance as not relevant, and found the disposition of the land with all right thereto, could not extend to the regality, except it had been expressed.

No 8.

Fol. Dic. v. 1. p. 492. Stair, v. 2. p. 172.

* * * The like was decided 20th February 1733, Hay of Strowie against Creditors of Simpson. See APPENDIX.

1734. December 7. EARL OF WIGTON *against* TOWN OF KIRKINTILLOCH.

No 9.

A BARON having granted a charter to his Burgh of Barony, with power to them to chuse their own Bailies, whom he appoints and declares to be his Baron-Bailies within the bounds of the Burgh; the LORDS found, that by this grant no more was intended than a subordinate jurisdiction, such as is competent to vassals, which the incorporation of the Burgh is; consistent always with the accumulative jurisdiction in the superior. See APPENDIX.

Fol. Dic. v. 1. p. 492.

S E C T. IV.

What cases must be tried by an Inquest.

1622. January 30. The STEWART of the MERSE *against* L. WESTNISBET.

IN an action of double poinding, pursued at the instance of one Johnston in the Merse, who for blood committed by him, was convicted by the Laird of Westnisbet, heritor, and vassal to the King, of the lands within the which the blood was drawn, and the fact committed, albeit he was no Baron; and also the said Johnston was convicted by the Earl of Hume's Bailie, as Stewart of the Merse, for the same blood. THE LORDS, in respect of the prevention of the King's vassal, preferred him in the right of the unlaw, to the Stewart, albeit the vassal's, viz. Westnisbet's decret was quarrelled by the party upon these nullities, viz. That the Laird of Westnisbet was no Baron, and so could not have right to blood-wits; *2do*, That it was given only upon probation of the committer's confession, testified by the clerk's assertion, whose affirmation could not make faith without the party's subscription, in a matter of an hundred pounds contained in that sentence, being for two blood-wits, or that he might

No 10.

The decree of an inferior judge for bloodwit was sustained on the party's confession, tho' without an inquest.