

No 4. the liberty to hold common courts against his own tenants, possessors of his lands within the bounds of his deputy, and against the other vassals of this bishoprick within his said bounds, and that the said deputy could not be further extended; which allegiance was repelled by the LORDS, in respect the question was betwixt two Bailie-deputes, and not betwixt the Lord or his principal Bailie and the depute.

Act. Baird.

Alt. Lawtie.

Clerk, Gibson.

Fol. Dic. v. 1. p. 493. Durie, p. 19.

S E C T. III.

Jurisdiction how dismembered.

No 5. 1630. March 3. LORN against PANHOLES.

A VASSAL though infest *cum curiis*, is not exempted from his superior's courts. This clause gives him power to hold courts upon his own tenants for his farms, or wrong done among themselves; which, at the same time, is not privative of the superior's jurisdiction; and therefore if the vassal himself do wrong, or commit blood, he may be convened in the superior's court, notwithstanding of the said clause.

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

* * This case is No 7. p. 4789, *voce* FORUM COMPETENS.

No 6.
The erection of a royal burgh within a bailliary excludes not the bailliary of its jurisdiction and casualties; and the case differs from that of a barony constituted within

1666. February 27. LORD COLVIL against TOWN of CULROSS.

THE Lord Colvil being infest in the heritable office of the Bailliary of Culross, by progress from the Earl of Argyle, first Bailie, who was infest by the Abbots before the Reformation; having full power of all jurisdictions, civil or criminal, and of all the amerciements, bloods, and casualties to his own behoof, he does thereupon pursue a declarator of the right against the Town of Culross, which is within the Lordship of Culross, that he had right to the bloods, and to all jurisdictions civil and criminal amongst the burgesses thereof. It was *alleged* for the defenders, absolvitor; because their town was erected in a burgh royal by the King, with power of heading and hanging, and other privileges

of burghs royal, by virtue whereof they have been in immemorial possession, in exercising all jurisdiction, civil and criminal amongst their own burgesses.

THE LORDS, before answer, having ordained either party to adduce witnesses as to the possession of their jurisdiction; which being closed, the debate was re-assumed upon the Town's right and possession;

It was *answered* for the pursuer, That he and his authors being infeft in the said heritable office long before the erection, and before the annexation of the abbacy of Culross to the Crown, no right granted thereafter to the Town, could prejudice his established right; especially seeing, in the very act of annexation, such Bailiaries are expressly reserved, and declared to be unprejudged; and as to the Town's possession, it was but clandestine, and not total, for the Bailies did still exercise jurisdiction even upon burgesses of the Town committing bloods in the Town, and likewise strangers committing bloods, as is instructed by his court-books and witnesses, which is sufficient to hinder prescription. It was *answered*, That the defence stood yet relevant, for the granting of the Bailiary could not be exclusive of the granter's own jurisdiction, but cumulative; and as the abbots, so the King, retained jurisdiction, and might dissolve a part of the barony, which thereby ceased to be within the jurisdiction of the Bailie of the barony, and might erect the same in a burgh royal, as he has done; in the same way as the King, after granting an heritable Sheriffship, may yet erect a barony within the same, which may exclude the Sheriffs, if the baron use diligence.

THE LORDS found, that the erection of the burgh royal being after the constitution of the Bailiary, could not exclude the same of its jurisdiction and casualty, unless it had been by possession sufficient to make prescription; and that the case was not alike, as if the barony of a baron were constituted within an heritable Sheriffship; because the casualties of the heritable Sheriffship belonged to the King himself, and could be only understood without prejudice of subordinate jurisdiction of Baronies, which were ordinary and known; but here the casualties belonging to the Bailie *proprio jure*, the constitution of the burgh could not prejudice them, even albeit the Lord of the regality's consent was thereto produced, seeing the Bailie consented not: But as to the possession and prescription, whether the Town could prescribe the right of the civil jurisdiction, albeit the Bailie exercised the criminal jurisdiction of bloods, or whether the Town could prescribe their right of a part of the civil jurisdiction, in so far as concerned trade; the LORDS superseded to give answer while the first of June, and that they had time to consider the depositions of the witnesses fully.

No 6.
an heritable sheriffdom, because the casualties of sheriffship fall to the King, but those of a bailiary belong to the bailie, and cannot be prejudged by any posterior grant.