

1709. *November 10.* The DUKE of ARGYLE, Petitioner.

THE Duke of Argyle gave in a petition to the Lords, craving their certificate on his right of Justice-Generalship within the bounds mentioned in his charters, on this ground, That, by an Act passed in January 1709, in the British Parliament, entitled an Act for improving the Union of the two Kingdoms, it is provided, that the Queen may issue out commissions of Oyer and Terminer, to such persons as she pleases to name, for trying the crimes of high treason and misprision of treason committed in Scotland, in the same manner as she may do in England; but this shall not prejudice any having the right of being Justice-General within such a particular district, or having jurisdiction in such cases of treason, &c. providing they make their right appear to the Lords of Session, and obtain their certificate to the Lord Chancellor of Great Britain; in which case it is declared, the said Justice-General, who has his right so certified, or his deputy, shall be on the said commission of Oyer and Terminer, to try these crimes, and shall be on the quorum: And then the Duke subsumes, that, by his charters, more than forty years back, he has the heritable office of Justice-General, (which comprehends the power of judging treason, and all crimes whatsoever,) within the shire of Argyle, and the whole isles of Scotland, except only Orkney and Zetland, and that part of the isle of Arran which belongs to the Duke of Hamilton; as also in all the lands of his vassals holding of his family, wherever they lie within the kingdom; as appears by his charter in 1667, expressly relating to an ancient one in 1634, and the progress of charters, seaisines, and retours since, with two ratifications of Parliament in 1669 and 1605, and sundry documents of possession in holding courts; and therefore craved the Lords would certify his right to the Lord Couper, Chancellor, in the terms of the foresaid Act, that he and his successors in the dukedom may have the benefit of the provision of being one of the quorum, when any such commission shall happen to be issued out.

The Lords having ordained this bill to be answered, her Majesty's Advocate returned it with this answer, That he had no instructions from the Queen or her ministers of state to oppose it. So the Lords perused all the documents produced; and, besides them, found, by the 39th Act Parliament 1693, and 73d Act 1695, his right of justiciary was, in some measure, acknowledged and reserved; therefore they granted the certificate craved, and ordained it to be signed by the President and one of their clerks, and the seal of court to be appended thereto. The Lords abstracted from declaring any thing about their possession, seeing the Act did not require it. But the charters bore not only that heritable office of justiciary, but likewise of being crowner and master-household. It was surmised, that of old they were Justice-General over all Scotland, and on their quitting the rest they retained it within the foresaid bounds. But this was not instructed: and, by the records, it appears the Lords Gray and Forrester were sometime Justice-Generals: and, by the 60th Act of Parliament 1503, the shire of Argyle, Lorn, and Bute, are ordained to come to the Circuit-court of Perth; so then the Lord Argyle had no exemption. Some doubted if his right of Justiciary would extend to judge that treason called perduellion or rising in arms. For it is certain, Lords of Regality cannot; and it was thought his Justiciary was no greater; and there was no in-

stance or precedent of it. However, the plurality extended it even to that, which is the highest of all secular crimes, and, by their certificate, declared in these terms.

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1709. *November 16.* SIR WILLIAM MENZIES OF GLADSTANES *against* SIR ROBERT DICKSON OF INVERESK.

MENZIES *against* Dickson. Sir William Menzies of Gladstanes, and sundry others, having taken a tack of the customs from the Lords of Treasury, in 1691, for five years, they made Sir Robert Dickson of Inveresk their cash-keeper, solicitor, and book-keeper. At the issue of the tack, they craving sundry deductions from their tack-duty, and the Exchequer not inclining to allow them, they were charged with horning; whereupon sundry of the tacksmen absconded, and Sir Robert Dickson went to London to negotiate their common concern; and, after his return, the Lords of Treasury and they having concerted the business, they got some deductions. There having great profit arisen from that tack, upwards of £48,000 sterling, and Sir Robert, the cashier, declining to count for his intromissions, Sir William raises a process of count, reckoning, and payment against him; in which Sir Robert Dickson craving allowance, (besides many other articles of expenses claimed by him,) of £500 sterling expended in his voyage to London, where he applied to King William, and got favourable returns, that were very beneficial to the whole society, and had influence on the deductions afterwards obtained:

ANSWERED,—That, by his commission, he was to act nothing in expending their money, without a warrant from a quorum of the tacksmen; which he cannot pretend he had for his London voyage. Likeas, the gratuities he gave there signified nothing to the advancement of their business; their deliverance came quite another way. And he was so far from being put to borrow or advance money for them, that *intus habebat* much more than would do the turn; but with their money he purchased considerable bargains of lands.

REPLIED,—Though he had no special warrant and commission to repair to London, yet his general employment, as their solicitor and cashier, empowered him sufficiently to do what might tend to the benefit of the society; and it was *utilis negotiorum gestio, et in rem versum* to the tacksmen.

The Lords thought he should have applied for a special warrant and instruction before he went; but if he could yet prove it was *utiliter gestum*, there might be some ground to modify something to him on that account: and therefore allowed him to condescend and instruct what was the services he did the company by going to London, and then they would consider what it might deserve.

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1709. *November 19.* WALTER GIBSON *against* MUNGO COCHRAN.

WALTER Gibson, late Provost of Glasgow, gives in a bill to the Lords, that he had consented to Mungo Cochran's being nominated factor on his estate;