

No 153.

Quadrupled for the defender; Though the grant of an office in general, *cum feodis*, &c. implies only the profits and fees naturally arising, according to the common rule, *Mandata jurisdictione, ea omnia mandari censentur, sine quibus exerceri non potest*; yet a person infest heritably in an office, may, by long possession, prescribe a right to some privilege, that doth not always follow the nature of the office. And it is strange to reckon the privilege of setting up weights, and exacting a small duty from such as weigh their goods there, for defraying the charges, an exotic profit of a Sheriff, who, *ratione officii*, is to inspect and regulate weights.

THE LORDS found, that the Earl's right of heritable sheriffship of Renfrew, *cum feodis, divoriis, casualitatibus*, &c. is sufficient to found a prescription to set up weights, and uplift the duties thereof, at the town of Kilbarchan.

Fol. Dic. v. 2. p. 110. Forbes, p. 379.

1727. February 18.

No 154.

MAGISTRATES of the CANONGATE *against* KEEPERS of the HACKNEY-COACHES.

IN the 1669, after hackney-coaches came to be used, the Magistrates of the Canongate made an act, exacting the sum of ten merks for each hackney-coach employed in the burgh, in satisfaction of the damages done to the causeways. This exaction was continued, without challenge, beyond the long prescription, till at last it came to be disputed in a suspension at the instance of the hackney-coachmen; who *pleaded, 1mo*, That the act of Council, imposing the toll, was *ultra vires*, against the public law, and length of time could not give it force; *2do*, The keepers of the hackney-coaches are not incorporated; and the deed of one cannot hurt another.—THE LORDS found, that, in regard the payment of duty of causeway-mail upon the hackney-coaches, since the act of the Council and Magistrates of the Canongate, in the 1669, was acknowledged by the keepers of hackney-coaches, the Magistrates have right to exact that duty, conform to the said act.—*see APPENDIX.*

Fol. Dic. v. 2. p. 109.

* * * See, relative to prescription of a right of Constabulary, 18th July 1676, E. of Kinghorn against Town of Forfar, *voce* PUBLIC OFFICER.

See Hatton against Dundee No 83. p. 10272.; *voce* PERSONAL and REAL.