established by the regulations in Parliament 1672, can never be thought to confer an exclusive right; and in fact, since then that court has in several cases exercised jurisdiction over the Orkneys.

No 340.

Replied, The term of Justice-General used for signifying the Justice over the whole kingdom, denotes not any greater power, but extent of territory. The regulations 1672 only appointed the office of Justiciar-General to be exercised by commissioners, without impinging on the King's power of granting other particular rights, either heritable, or for a special occasion. The argument would equally exclude both. But by act 39th, Parl. 1693, it is declared that their Majesties might grant Commissions of Justiciary for such times as they should think fit, and there appears such a commission in the records of Chancery, dated 4th July 1682. There are no expressions in the act 1672 importing a limitation of the prerogative; nor can it be supposed any such thing was intended in that reign, wherein an act past, 1681, declaring that the King might by himself, or any commissioned by him, take cognizance of any cause he pleased.

The Lords found, That the office of Justiciary was subordinate to the High Court of Justiciary, and not a separate or distinct jurisdiction from the Stewartry or Sheriffship entitled to any separate recompence.

Fol. Dic. v. 3. *p.* 364. *D. Falconer*, *v.* 1. *No* 229. *p.* 316.

1748. *January* 23.
The Duke of Gordon and Carmichael of Balmedy, *against* The King's Advocate.

No 341.

Upon the claim of David Carmichael of Balmedy, heritable Bailie of the regality of Abernethy, by grant from the family of Douglas; and, on the claim of the Duke of Gordon, Bailie of regality of Spynie, by grant from the bishop of Murray; the Lords found, That a Lord of regality might lawfully make an heritable Bailie, and also that a bishop might make an heritable Bailie, subsequent to the act of annexation, by which bailiaries of church regalities prior to it were made valid. Whereas it was pleaded, churchmen who were liferenters could not make heritable Bailies.

Fol. Dic. v. 3. *p.* 364. *D. Falcoder*, *v.* 1. *No* 231. *p.* 319.

1748. *January* 27. The Duke of Gordon *against* The King's Advocate.

No 342.

Upon the claim of the Duke of Gordon for the heritable bailiary of Kinloss, which had been validly constituted by the abbot, and having fallen into the King's hands by forfeiture after the act of annexation, had been again granted

No 342.

by a charter of *novo-damus*; the LORDS found this grant did not fall under the sanction of the statute 1455, forbidding the grants of heritable offices.

Fol. Dic. v. 3. *p.* 363. *D Falconer, v.* 1. *No* 232. *p.* 319.

1748. *February* 5.

The DUTCHESS of GORDON *against* The KING'S ADVOCATE.

No 243.
Recompence due for a grant of bailiary over the grantee's lands, lying in a church regality, on which there had been no possession for 40 years.

THE Dutchess Dowager of Gordon claimed the Bailiary of Regality over her own lands of Prestonhall, in virtue of a charter 1688 from the Archbishop of St Andrew's, of the lands, with the office, described as lying within the regality of St Andrew's, proceeding upon a resignation.

Objected, That there had been no exercise of jurisdiction upon this grant of Bailiary.

It was considered, That the grant was to a proprietor over only his own lands; so that there were no heritors who could have prescribed an immunity. And the only effect of the Bailiary being lost, would be the falling back of the estate under the general jurisdiction of the Regality of St Andrew's; which could not be pretended by the Lord of Regality in this case, or the like, where the lands and office were contained in one grant for one general *reddendo*, which the Lords had constantly accepted for both.

THE LORDS therefore sustained the claim.

Fol. Dic. v. 3. *p.* 364. *D. Falconer, v.* 1. *No* 236. *p.* 321.

1748. *February* 12. BAILIE and MONRO *against* The KING'S ADVOCATE.

No 344.
No recompence found due to the Bailie and Clerk for life of a regality, by grant from the fiar, who had a gift of the liferenter's escheat, but was himself attainted after 11th Nov. 1746, for treasons committed before that time.

EVAN BAILIE, as Bailie, and Alexander Monro, Clerk for life of the Regality of Lovat, by commission, 21st February 1738, from the late Lord Lovat, claimed a recompence for their respective offices.

Objected, The statute makes no provision in favour of Bailies for life.

2dly, To both claims, Lord Lovat's title to the estate of Lovat was made up of a gift of the liferent escheat of Alexander M'Kenzie of Fraserdale, in whom was vested the liferent of the said estate and Regality, and of legal diligence, whereby he had denuded Hugh Fraser, the fiar thereof; but as the liferenter was alive at the date of the commission, and still so, he could not grant any in virtue of the right of fee, and the jurisdiction did not fall under liferent escheat, nor, if it did, could be understood to be comprehended under the general gift, which did not mention it; but it was in the Crown either as not gifted, or as having remained with Fraserdale after the falling of his escheat, until it was forfeited by his attainder for the rebellion in 1715.