

1709. *June 24.* LADY ORMISTON and HUSBAND *against* The LAIRD of GRANT.

LORD Prestonhall reported the Lady Ormiston and her Husband against the Laird of Grant. Rait of Hallgreen and Grant were debtors to the deceased Lord Whitelaw; and this debt being assigned by him to his Lady, she and her present husband charge Grant, and denounce him, and take the gift of his escheat; and pursuing a general declarator, it was OBJECTED,—The execution of the horning was null; because he was not denounced and registrate at the head burgh of the regality within which he dwelt, conform to the 268th Act, 1597; in so far as it was executed at Cromdale; whereas, the head burgh of this regality is declared to be the Castletown of Freuchie, now called the town of Grant.

ANSWERED,—Ought to be repelled; because, by the 43d Act, 1455, all regalities are discharged, except given by deliverance of Parliament; which this is not. And, though there be a subsequent ratification of Parliament, *anno* 1696, yet that is but *periculo petentis*, the Act requiring they should be granted in plain Parliament; and the Lords have sustained inhibitions, hornings, and other diligences against persons living within regalities, though not executed at their market-crosses, but only at the head burgh of the shire, where the custom has not been *in viridi observantia*; as was found 12th January 1672, *Scot* against *Boyd*, though it was not executed at the Thorn of Torphichen; and, 11th January 1677, *Scot* against *Dalmahoy*. Though Bavelaw lay, by annexation, within the principality of Renfrew, as holding of the Prince of Scotland, yet a denunciation at the market-cross of Edinburgh only was sustained, in respect of its great distance from Renfrew, and the creditor's probable ignorance. And the like as to the regality of Drem in East Lothian, as the head burgh of the regality of the Earl of Haddington's temple lands. Likeas, Grant's regality being but a late erection, it has scarce come in observance; and being erected within the heritable sheriffship of Murray, there was a reduction intended against it, which was remitted to the Parliament, and there depends.

REPLIED,—This arguing would annul the most part of the regalities in Scotland, for few of them are granted in plain Parliament: and this being objected against the Duke of Queensberry's regality of New Dalgarno, at its passing in Exchequer, was repelled, as Sir George Mackenzie observes on that act. And the sheriff's raising a reduction of it takes not away the exercise of his jurisdiction *medio tempore*; and it is offered to be proven that diligences are executed at that place, and that a register is kept of the same.

The Lords, before answer, resolved to take trial what has been the custom of executing diligences within this regality, and if they have been in use to be registrate within that bounds, before they would sustain the nullity of the horning.

*Vol. II. Page 506.*

---

1709. *June 29.* PATRICK GORDON of MYRETON *against* The CREDITORS of NAIRN of SAINTFORD.

In Saintford's contract of marriage there is a clause, that either the lands are