

their deutes, act 84. Parl. 6. James VI. ; albeit the former may have as great influence upon the latter, as a sheriff-clerk *qua* judge can have upon his clerk-depute. And there appears no greater danger to the lieges from the sheriff-clerk's judging as depute-sheriff, than from the sheriff-depute himself; yea, a greater presumption of partiality lies against the sheriff-depute, especially in decreets condemnatory, where he gets sentence-money; since the sheriff-clerk's dues are the same, whether the sentence condemn or assoilzie.

Duplied for the suspender, There being necessity for an act of Parliament to allow deutes to judge in the case of their constituents, it seems yet unlawful for a sheriff-clerk and his depute to officiate as a judge and clerk *in eodem judicio*. Yea, a depute's judging his constituent's cause is not so dangerous; seeing the clerk of court, who is altogether independent both of the sheriff and his depute, is a check to him; whereas here, Mr James Leslie had no check upon him, but what he might remove him at the next turn in case of a disobligation.

THE LORDS repelled the nullity objected against the decret.

Forbes, p. 486.

1752. December 14. MAGISTRATES of Stirling *against* SHERIFF-DEPUTE.

THE Sheriff has no power of judging as to the erecting of buildings or encroachments on streets within burgh, this belonging alone to the Dean of Guild and Council.

Fol. Dic. v. 3. p. 360. Fac. Col.

* * * This case is No 302. p. 7584.

1772. February 22.

JAMES CATHCART of Carbieston *against* JAMES ROCHEID of Inverleith.

MR ROCHEID standing in the right of three-fourths of the lands of Inverleith, in the county of Edinburgh, and of Darnchester in the county of Berwick; which two estates, under a deed of entail executed by Sir James Rocheid, proprietor thereof, had devolved upon four heirs-portioners, and hitherto had been held *pro indiviso* by them, or those deriving right from them; in April 1771 took out a brief of division from the chancery, which was directed to the sheriff of Edinburgh, within whose jurisdiction the lands of Inverleith are situated; and, after being published in common form, was, by virtue of letters of supplement, executed against James Cathcart, as the proper party to the division, being in the right of the remaining fourth, both of Inverleith and Darnchester.

No 371.

No 372.

No 373.

The Sheriff of the county where the lands are situated, is the only judge competent to a brief of division among heirs-portioners. Advocation from him, when *in cursu* of obtempering a brief at one party's instance, for