

GIBSON CRAIG, Esq. Appellant.—*Clerk—Cranstoun—
Moncreiff—Ivory.*

No. 16.

J. ROBERTSON and D. M'GREGOR, Respondents.—
Solicitor-General Wedderburn.

Public Officer—Stat. 6. Queen Anne, c. 26.—Exchequer.—Held, (affirming the judgment of the Court of Session), That the Barons of Exchequer are entitled to appoint a messenger and porter to perform the menial services of the Court, although another party be vested with the right of heritable usher and door-keeper of the Court, and of appointing deputies; and although he offered to prove, that he and his deputies had been in the practice of performing the same services as those executed by the persons so appointed.

THE heritable office of usher and door-keeper of the Court of Exchequer in Scotland, was conferred on the family of Bellen-den, by a charter from Queen Mary, on the 31st May 1655, and continued in that family till 1802, when it was exposed to sale, and purchased by the appellant. On the 2d of June 1807 he obtained a charter under the Great Seal, on which he took in-
feftment, whereby he was invested in ‘totum et integrum hære-
ditarium officium ostiarii et custodis januæ nostræ dictæ curiæ
scaccarii, cum omnibus feodis, proficiis et casualitatibus, im-
munitatibus et privilegiis ad idem pertinen. et spectan. et libero
exitu et introitu ejusdem, una cum potestate deputatos consti-
tuendi.’

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Lord Reston.

In virtue of this power, the appellant, like his authors, nomi-nated two deputies, William Veitch and William Allan, who accordingly acted as door-keepers, and drew the ordinary salary, with all the accessory emoluments.

By the 6th of Queen Anne, chap. 26. it is enacted, that the
‘Court of Exchequer is hereby empowered, from time to time,
‘to depute and appoint all such other officers, ministers, clerks,
‘servants, and attendants; for the constituting of which there is
‘no provision made by this Act, as shall be thought convenient
‘for the use and service of the said Court, and for carrying on
‘and dispatching of the business therein; subject and liable
‘nevertheless to be suspended, punished, and removed; and to
‘the taking of such oaths mutatis mutandis for the faithful exe-
‘cution of their respective offices, places, and employments, as
‘herein before is provided for any of the officers, attornies, or
‘clerks in the said Court of Exchequer in Scotland.’

In 1810 the Barons of Exchequer issued a warrant in favour of the respondent, James Robertson, by which ‘they appointed
‘him messenger to the Court,’ with a salary of L. 60 per annum;

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and at the same time they employed the other respondent, Daniel M'Gregor, to act in capacity of porter, for which he was paid wages weekly. The appellant, conceiving that this was an encroachment upon his right of appointing deputies, brought an action to have it found and declared, 'that the said James Robertson and Daniel M'Gregor, defenders, have no right to act as under door-keepers or messengers of the said Court of Exchequer;' and that they ought to be prohibited from doing so in future. In defence it was stated, that the Barons, by virtue of the above statute, had power to appoint such persons as should be necessary for the use and service of the Court; that Robertson was employed to carry letters and messages to and from the Barons, and answer bells, and that M'Gregor's duty was to carry coals and mend the fires; that these functions did not encroach on those performed by the appellant and his deputies, and that, even if they did, still, as he could not allege that there was any invasion of his pecuniary interests, he had no interest to object that he was gratuitously relieved of part of the burdens of his office.

The Lord Ordinary assoilzied the respondents, 'in respect that the defenders are paid by the public, and that their departments are distinct from those in the pursuer's charter; and in respect that this is an amicable suit for the purpose of ascertaining a question of right, and parties decline investigation into facts, dispenses with a representation.'

The appellant having reclaimed to the Inner-House, and averred, that the duties performed by the respondents were precisely those which fell to be discharged by him and his deputies, the Court appointed him to lodge a condescendence of his averments; and after having done so, their Lordships, on the 9th of March 1821, refused his petition, and adhered to the interlocutor complained of.*

The Court was of opinion, that, under the statute, the Barons were entitled to appoint persons to perform the menial duties connected with it: that the duties of the appellant, and his deputies, fell properly to be exercised within the walls of the Court, whereas those of the respondents were executed beyond them, and could not be considered as forming part of those to be performed by the appellant.

He then entered an appeal to the House of Lords, and contended,—

* Not reported.

1. That as the nature of his officé did not impose upon him a mere individual duty as a single servant of the Court, but created him the head of a general department, having the controul of all the subordinate officers who were necessary to perform the services of the Court, the appointment of the respondents was an encroachment upon his rights; and that the statute expressly declared, that the 'officers in that Court who have grants of their offices during life, or of inheritance, shall enjoy their offices according to the nature of their gifts.' And,

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2. That he was ready to establish, that there was the most complete and perfect identity between the functions performed by the respondents, and those which he and his deputies were entitled to discharge, and had been in the practice of doing:

The House of Lords 'ordered and adjudged, that the appeal be dismissed, and the interlocutors complained of affirmed.'

J. CAMPBELL—A. MUNDELL,—Solicitors.

(*Ap. Ca. No. 21.*)

GEORGE DUNLOP, Writer to the Signet, Trust-Disposce of Dr DAVID RAMSAY, Appellant.—*Fullerton—Murray.* No. 17.

Admiral Sir ALEXANDER INGLIS COCHRANE, Respondent.—*Shadwell—Menzies.*

Adjudication—Trust-Disposition—Title to Object.—A party being in possession of an estate under an ex facie good title, but not infest, and another party, with a view to make up a tentative title to the estate, having executed a disposition of it in favour of his agent ex facie absolute, but qualified with a back-bond declaring that it was in trust; and the trustee having brought an adjudication of the estate, founding on the disposition;—Held, (affirming the judgment of the Court of Session), 1. That the party in possession was entitled to object to the adjudication; and, 2. That it was not competent to adjudge the estate on such a disposition.

IN 1719, Alexander Inglis executed an entail of his estate of Murdiestoun, in the county of Lanark, in favour of Alexander Hamilton, and a series of substitutes, who were bound to assume the name of Inglis. In virtue of this deed, Alexander Hamilton acquired right to the estate, and possessed it till 1783, when he died, and was succeeded by his younger brother, Gavin. On the death of Gavin, in 1798, he was succeeded by his youngest

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1ST DIVISION.
Lord Alloway.