

they marry Peers, they take Place only according to the Degree of their Husbands tho they were by Creation or Birthright of a higher Degree. Because the feudal Dignity they receive from their Husbands, supersedes that due to them by Birth. Nor would a Noblewoman by Birth who loses her first Dignity, by marrying a Nobleman of an inferior Degree, recover it without a Royal special Warrant if she afterwards marry a Peer. *Mikenzie of Precedency* cap. 9. pag. 59. Women Nobles by Marriage only, lose their Dignity by marrying to Persons who are not Nobles. *Case i. inst. 16. b. 6. Rep. 53. Mikenzie ibid. pag. 58.* But a Woman Noble by Marriage, retains the Privilege due to her by her Husband, tho she hath been degraded by Forfeiture or otherwise. *Mikenzie ibid. pag. 92.* Because Crimes are only personal, and Forfeiture corrupts the Blood only as to Descendants, but not as to the Wife.

King Charles the Second, for preventing Differences between the Nobles of Scotland and England ordered all Scottish Peers to take Place in Scotland of all English Peers of the same Degree, and the latter to take Place of the former: which was suitable to the Law of Nations.

But now since the Union of the two Kingdoms, all who were Peers of Scotland at that Time, and the Successors to their Honours and Dignities, take Place immediately after the then Peers of the like Orders and Degrees in England or their Successors, and before all Peers of great Britain of the same Rank created after the Union Art. 23. of the Union.

The Nobility of England before the Union, and Peers of great Britain since have the following considerable Privileges. They are exempted from all Arrests or Imprisonment of their Persons; unless for Treason Felony or Breach of Peace, Condemnation in Parliament, or Contempt of the King.

Their Persons being always to be free, for the Service of the King and Kingdom; and their Estates held sufficient by Law to satisfy all Debts and Damages. Upon which Account no Peer can be outlawed in any civil Actions and when he is Plaintiff or Defendant on such a Trial, the Array, i. e. the ranking and setting forth of the jury, may be quashed by Challenge, unless one Knight at least be returned of the jury. Again, a Day of Grace is not to be granted to the Plaintiff in any Suit or Action where a Peer is Defendant because Law presumes, that a Peer must always be ready to attend the Person of the King, and the Service of the Commonwealth, and therefore is to have Expedition of Justice. They cannot upon any civil Cause be impannelled upon a jury, tho in a Matter between Peers. Nor are they in any Case to be bound to their good Behaviour or put to swear they will not break the Peace, but only to promise so much upon Honour. When Peers are Defendants in any Cause, they answer upon Honour, in Stead of giving an Oath of Calumny 9 Feb. 1711 E. Winton's Case. And in a ranking of Creditors they declare the Verity of their Debt upon Honour, in Stead of an Oath ex officio given by others. December 1721 Creditors of King of Aucklousin competing. But they depone in common Form as to things referred to their Oaths of Verity 9 Feb. 1711 E. Winton's Case 7 Feb.

1710

1710 Bryson and Henderson contra J. Athole or as to their having of Writs 19 December 1711 J. Montrose contra M'aully of Ardincaple. And if a Peer be produced as Witness in a Cause between Party and Party, he must be sworn to give Evidence as other Persons. In criminal Causes by Indictment of Treason or Felony or Misprision of either, a Peer is to be tried only by a Jury of Peers whereof he can challenge none, nor are they put to their Oath, but only to give their Verdict upon Honour. But in a Suit at the King's Instance against a Peer, for any Offence inferior to Misprision of Felony, or where an Appeal of Murder or Felony is sued by any common Person against a Peer, he is to be tried by Laymen. A Peer is not to be put to the Rack or Torture to discover the Truth, tho accused of high Treason and if mute upon his Trial, shall be convicted and not proceed to Death as a Commoner. A Peer cannot be called out by the Sheriff raising the *paup' comitatus*, to assist him for the suppressing of Riots and Routings. False Reports of Peers, whereby any Scandal may arise to their Persons, or Discord between ^{and Bishops} them and the Commons, are called *scandala magnatum* and punishable. 2. Arch. 2. cap. 5. Peers ^{are} have Privilege of sitting and voting in the higher House of Parliament, and in Case of their lawfull Absence, to constitute Proxies to vote for them. They cannot be affected towards the standing Militia, but by six or more of themselves: and are privileged from contributing towards the Expence of any Member of the ^{House of Commons} House of Commons. In Places of Trust committed to them they are allowed to make Deputies. A Peer may retain six Aliens born, whereas another may not retain above four. A Peer is allowed to sit covered within the Bar of the inner Court of Session, while the Lords are judging Causes. Noblemen are in the Eye of the Law Peers, and to be tried by their Peers, and enjoy most other Privileges as Noblemen Only they cannot in the Opinion of some great Lawyers maintain an Action upon the Statute *de scandalo magnatum*.

No Irish Peers *qua talis*, had Right to any of the aforesaid Privileges in Britain. But all Peers of Scotland before the Union, and the Successors to their Honours and Dignities enjoy all these Privileges, except the Right of sitting in the House of Lords, and the Privileges depending thereon, particularly the Right of trying Peers in criminal Causes: which are appropriated to 16 only of the Scottish Peers, elected from June to June by their own Body of Nobility, upon a Proclamation issued out under the great Seal of great Britain. These elect Members, have all the Privileges of any English or British Peer Art. 22. 23. of the Union. And are elected in Manner prescribed by Statute 1st J. 4. Stat. 2. A. 6. 6. A. cap. 23. But 25 January 1712 it was resolved by the House of Peers, that the sitting of Peers of great Britain who were Peers of Scotland