

grant receives its interpretation and determination from the nature of the thing and laws of the nation. If there should be no other difference betwixt his office and other residents, than that they may be recalled *indicta causa*, whereas a conservator for life cannot be removed without a reason; it would be under an arbitrary disposal, and upon the matter little better than an office during pleasure. It is no novelty to see foreign states injured apply for redress to the ordinary judicatures. Are not all matters of prize and reprisal so cognosced? And if a foreign state should complain of injustice done by our judges of the admiralty, their decreets would be reviewed by the Lords of Session. The accusations and complaints by Gundamar, the Spanish ambassador, were not judged by King James the Sixth, but in form of process before the King's bench. The Sovereign's part is to make inquiry, and to remit the matter, if probable, to be cognosced by the judges competent. Nor is the inconveniency arising from delay in these matters to be regarded; since the same is alike to all nations.

QUADRUPIED for Sir Alexander,—Though the Judge Admiral determines prizes and other cases relating to foreigners, there are vast disparities betwixt him and the conservator. For the one, and not the other, must by his office stay abroad in the face of the injured; which, after public affronts and breaches, is dishonourable to Majesty. The admiral's principal business is to decide in maritime affairs betwixt subjects; the cases of foreigners, *qua* private persons, falling in by accident only: Whereas the conservator hath chiefly to do with a neighbouring sovereignty, *qua* such; and his jurisdiction over Scottish subjects there, is no more than a pendicle. There is also a special law and custom concerning the conservator, which concerns not the admiral, or any other judge; and the Queen is liable for the misdemeanours of her conservator abroad, but not for her judges at home. A judge at home malversing or committing iniquity, may be allowed to continue in possession till formal deprivation; because, what he does amiss may be remedied by suspension, reduction, protestation for remeid of law, reprival, remissions, &c. Whereas, a conservator's deeds of injustice to the States and strangers there, are only reparable by the Sovereign, who may summarily remove for preventing mischiefs that cannot be redrest. A resident could not indeed be corporally punished by fining, banishment, &c. but in the ordinary form of law; but the privilege of censuring, suspending, or depriving, such a one, belongs to her Majesty; and the studied specialities of the annexed jurisdiction can never deprive her of it.

The Lords found, That Sir Alexander Cuming could not warrantably attain any possession upon her Majesty's gift, after Sir Andrew's reduction and declarator was intended, before the same was determined, or a decret obtained at Sir Alexander's instance declaring his right.

*Page 62.*

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1706. *January 18.* DANIEL CAMPBELL, Collector at Port-Glasgow, *against* Sir ALEXANDER ANSTRUTHER of Newark.

THE said Daniel Campbell having charged Sir Alexander Anstruther to perform a minute of sale of the lands of Shawfield, and others, about the town of

Rutherglen, he suspended upon this reason, that the charger had passed from his bargain, in so far as, the suspender having afterwards acquainted him by a letter, that he could get his whole interest in Kilbride sold to the Dutchess of Hamilton; if these in the minute were included: the charger returned answer, that he would be sorry if his bargain should obstruct the suspender's selling the rest; but if the Dutches were ambitious of his little bargain, she should be welcome to it for some consideration. Upon the faith of which letter the suspender had entered into a contract with the Dutchess for the lands in the minute.

The Lords found, the letter was not an overgiving of the bargain, and did not put Sir Alexander *in tuto* to enter into a new one with the Dutchess; but that he behoved to fulfil and perfect the first minute.

*Vide* February 13, Dutchess of Hamilton contra Campbell.

Page 73.

1706. *February 1.* Mr. DAVID RAMSAY, W. S. as Factor for the Executors of the deceased JOHN KIRKWOOD, servant to the Duke of Lauderdale, *against* ALEXANDER GIBSON of Durie.

IN the action at the instance of Mr. David Ramsay, as factor foresaid, against Alexander Gibson of Durie, as representing the deceased John Gibson of Durie, for payment of a bond granted by him to the said John Kirkwood, the pursuer's constituent: no process was sustained; because the summons contained only a warrant to cite the defender on twenty days for the first diet, and not upon twenty-one days. Albeit it was alleged, for the pursuer, that there are more [than] twenty-one days from the date of the execution to the first diet of compearance as marked in the summons; so that the defender can pretend no prejudice. And a literal mistake of the writer of the summons may be helped, as the wrong filling up of the days of compearance is allowed to be helped at the bar, when the pursuer offers to abide by.

Page 90.

1706. *February 7.* The Lord BELHAVEN *against* Lord DAVID HAY of Beltoun.

THE Lord Belhaven having pursued Lord David Hay upon the Act 17, Parl. 1669, for adjudging a part of the defender's neighbouring lands of Beltoun to himself, to make an inclosure regular: it was alleged for the defender, that there was action formerly raised before the Justices of Peace upon the same account, which is not yet discussed; and therefore no new process can be sustained before the Lords, till the ish of that *lis alibi pendens*; there being no way to bring a depending process from an inferior judge to a more sovereign court, but by advocacy. 2. No process at the pursuer's instance, in respect he has produced no title in his person to the lands he is inclosing; and the act of Parliament ordains,