

No 4.

beit he was not yet attending the Parliament; in respect the Parliament was sitting, and he claimed his privilege, and represented that he was under the necessity to go and attend it.

*Fol. Dic. v. 1. p. 572. Forbes, p. 353.*

\* \* \* Fountainhall reports this case.

LIVINGSTON having been a partner in the glass-manufactory at Morison's Haven, and their treasurer, he advanced and debursed, for the use of the society, L. 1275 Scots, and pursues Prestongrange, as he who had acquired all the shares, for payment of the balance of his account; and he refusing to answer at this time, in respect of his privilege as a Member of the British Parliament, and just going away for that end, it was *objected*, The Parliament not being yet set down, his privilege took no place. *Answered*, They had the allowance and interval of 14 days before their sitting, and as much after, for their going and coming, so his privilege was already commenced and existing. Some moved the question, whether a Member not going, but staying at home, could claim his privilege, as if he were actually attending? It was argued on the one hand, that the privilege was given in respect of their absence, as absent *reipublicæ causa*, and not to divert them from attending and giving advice in the public affairs of the nation; but if they did not go to Westminster, but staid at home, the cause of the privilege ceased, *et cessante causa privilegii cessare debet effectus*. It was reasoned on the other side, that he behoved to be once received in the House, and sworn as a member; but after that, if he was absent, it did not deprive him of the privileges annexed to the said office and trust, but made him only liable to, and censurable by, the Parliament for his withdrawing. THE LORDS waved this point, in regard it was informed he was actually going to London to attend the Parliament. Some thought this privilege a great remora and stop to the administration of justice, seeing it is pleaded not only to extend to the 61 members from Scotland, but to as many servants as they please to take with them: so that bankrupts have no more to do for protecting their persons, but to get themselves listed by collusion under the name of their attendants.

*Fountainhall, v. 2. p. 526.*

No 5.  
A Member of Parliament allowed to claim his privilege to stop process against him, although he sisted himself *in initio litis*,

1710. February 17.

Captain HENRY BRUCE against Mr WILLIAM DALRYMPLE of Glenmuir, and ALEXANDER INGLIS.

IN the action at the instance of Captain Bruce against Mr William Dalrymple and Alexander Inglis, mentioned December 23. 1709, *voce* PART and PER-TINENT, the LORDS allowed Mr William to claim his privilege of a Member of Parliament, to stop process, albeit he had sisted himself *in initio litis*, and pro

poned defences *in causa* without founding on his privilege, which the pursuer contended was a tacit renunciation of the privilege, since *primus actus judicii, est judicis approbatorius*. For the LORDS seemed to be of opinion, That this was not of the nature of an ordinary declinature, or like the privilege of exemption from answering before inferior courts, that is competent to members of the College of Justice, that may be renounced expressly or tacitly.

*Fol. Dic. v. 1. p. 572. Forbes, p. 403.*

No 5.  
and proponed  
peremptory  
defences  
without  
founding on  
the privilege.

1712. June 25.

KENNEDY against CUMMING.

SIR ANDREW KENNEDY having, in April 1711, obtained Sir Alexander Cumming of Coulter's decret reversed, and himself reponed to his Conservator office by the House of Peers, and obtained their remit to the Lords to tax his expenses, he applied in June 1711, to have them modified, and gave in an account of L. 1800 Sterling. But it being *answered* that Sir Alexander was out of the kingdom, and not bound to answer till cited, the Lords ordained him to be summoned on 60 days, which put off the summer session, and brought it to the 1st of November, at which time Sir Andrew Kennedy renewing his claim of expenses, Sir Alexander founded on his privilege as a Member of Parliament; which being allowed by the Lords, though the English Parliament was not then set down, Sir Andrew protested of new for remeid of law, and finding it would be tedious to bring it in formally, he was advised by the English lawyers to table it by way of summary complaint; whereon he obtained a deliverance, ordering the Lords of Session forthwith to tax his expenses, and direct their payment. On this he now gives in a bill to the Lords, deducing all the steps aforesaid, and craving their modification of expenses after 14 months delay. THE LORDS found, by this last ordinance the Peers had laid aside his privilege of Parliament, and therefore appointed Sir Alexander Cumming summarily to answer; for if it should be delayed till November, he would of new again found upon his privilege; but the Peers seem to have waved it as not competent in this case.

*Fol. Dic. v. 1. p. 572. Fountainball, v. 2. p. 743.*

\*.\* Forbes reports this case ::

1712. June 26.—SIR ANDREW KENNEDY set forth, in a petition, an order and decree of the House of Peers, dated 19th April 1711, reversing the Lords' decret in favour of Sir Alexander Cumming, and ordering their Lordships to direct expenses in the suits mentioned in the said order, to be taxed according to the course of the Court; pursuant whereunto he had, by appointment of their Lordships, 21st July 1711, summoned Sir Alexander Cumming. THE LORDS, 9th November 1711, upon Sir Alexander's pleading his privilege of Par-

No 6.  
A party had  
obtained re-  
versal in the  
House of  
Lords, of a  
decree of the  
Court of Ses-  
sion, with a  
remit to that  
Court to tax  
the expenses.  
The other  
party pleaded  
privilege as a  
Member of  
Parliament.  
Disallowed.