

communion; and, therefore, though the act 1690, does expressly subject episcopal ministers to the censure of the church, by suspension and deposition, yet that is by the last words of the act explained, so as they shall only be deprived of their churches and benefices; and the design of the act of Parl. 1693, was to the same effect.

It was DUPLIED;—Both acts do clearly subject the episcopal ministers, whether in churches or out of churches, to the censure of the church, even to deposition; and although, on such depositions, it be declared, they shall *ipso facto* lose their stipends and benefices, yet that does noways restrict the legal effect of deposition; and the act of Parl. 1693, does further clear the same, and enables the church judicatories to proceed the length of deposition in express terms, *tam ab officio, quam a beneficio*, and that either in case of not qualifying themselves, as by that act is required, or in case of error or scandal.

The Lords refused the bill of suspension, in so far as it is founded on the reason of iniquity. *Vid. 22d November, 1717, infra.*

*No. 173, page 238.*

---

1717. *November 22.* PATRICK LYON *against* The JUSTICES of PEACE of the Shire of Fife.

[*See the preceding Case.*]

MR. PATRICK LYON'S meeting-house in Kinghorn, being shut up by a sentence of the Justices of Peace, in manner more fully mentioned betwixt the same parties, the 20th instant, the Ordinary reported a separate reason of suspension of the said sentence, viz. that albeit the Lords had formerly refused his bill, in so far as it was founded upon the incompetency of the presbytery's censuring him who was minister of the church of Kinghorn, under the protection of the government. He now insisted on this further reason, that the Presbytery had declared his church vacant, and supplied the church with another minister; to which censure he submitted, and thereby was in the same case with all the other episcopal ministers in Scotland, who had not enjoyed benefices under the protection of the government; and, by the toleration act, it was free for any episcopal minister to set up a meeting-house, as he had done, in the manner directed by the said toleration act; and the justices of peace, and all judges, were by that act obliged to protect them. And if it were in the power of the church judicatories to depose all episcopal ministers who had never joined in their communion, they might, in a great measure, elude the benefit of the toleration act, and make the differences wider, and possibly might even pretend to exercise jurisdiction over them after they had set up meeting-houses.

It was ANSWERED,—It was fully cleared, when the suspension was formerly reported, that, by the tenor of the 5th Act, Parl. 1690, and by the 22d Act, Parl. 1693, all the episcopal ministers of Scotland, whether enjoying their churches or not, were subjected to the censure of the church judicatories by law established, with relation to their life, doctrine, or scandal; and, therefore, albeit it were instructed in the most authentic manner, that the suspender's church was declared

vacant, and supplied with another minister, upon the account of his having deserted it ever since the indemnity; yet that did not hinder but that the church, by virtue of the foresaid acts of Parliament, might censure for other offences as they had done, and that censure could not be reviewed but by a superior judicatory. If the censure of the church had been after the suspender had applied, in the method directed by the act of toleration, to have a meeting-house, then it might well have been argued, that the toleration act did exeem episcopal ministers in meeting-houses from the jurisdiction of church judicatories: but that is not the case; for, by the sentence of deposition, compared with the suspender's application to set up the meeting-house, it appears he was deposed long before that time; and, therefore, as to the benefit of the toleration, and as to all civil effects, he was to be considered as a laic, whatever his own apprehension might be as to the character of his ministerial function. Yet, as the law had invested the church with authority to censure, even to deposition, he was, by that sentence, rendered incapable of the benefit of the toleration: neither was there much reason to fear any bad consequence, seeing the law presumes the judicatories will deal justly, and there has been little complaint of rigour that way, and superior judicatories of the church have given just redress when there was occasion for it.

The Lords refused also to pass the bill upon that reason.

*No. 175, page 240.*

---

1718. *December 17.* The Creditors of FRASERDALE *against* The LORD LOVAT, Donator to the single and Liferent Escheat of ALEXANDER M'KENZIE of FRASERDALE.

HIS Majesty and the Government understanding that a rebellion was like to break out in Scotland, there passed an act in the Parliament of the first year of King George, for encouraging of superiors, and vassals, landlords, tenants, and others, who should continue stedfast and firm in their loyalty; and likewise for summoning suspected persons in the way and manner prescribed in that act; and under the penalty of single and liferent escheat, in case of not compearance.

Fraserdale had the misfortune to be one of these suspected persons, and who being summoned, did not compear, and thereby incurred the penalty. He was also engaged in the rebellion, and thereafter forfeited: there being a gift of his single and liferent escheat to Simon Lord Lovat, (so he is designed in the gift,) whereupon he entered immediately to the possession of the moveables, and by the favour of the tenants attained also to the rents of his lands.

The creditors raised a process for constitution of several debts, calling the Officers of State, and likewise Fraserdale; and upon the dependence of that process, they did arrest in the hands of the tenants; who having suspended upon double distress, the question of preference came to be debated,—Whether the donator had the benefit of the escheat without the burden of any debt, or if the rents of the land were subject to the debts and diligence of creditors, and preferable to the donator.