

1749. *January 10.*

JOHN COUTTS and COMPANY *against* RAMSAY and STEWART.

No. 48.

SESSION found not competent to advocate processes from the conservator's Court at Campvere. It did not appear very clear, whether in case of the conservator's committing iniquity there lies any remedy? or what is the remedy? but we were clear it is not in the Court of Session. (See DICT. No. 77. p. 7341.)

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1749. *January 11.*

CASE of SIR JOHN HOUSTON and MR GEORGE BROWN, Advocate.

No. 49.

Procedure in consequence of a breach of the peace in Court.

YESTERDAY, in the middle of a cause, a complaint came from one of the Outer-House clerks to Minto, who had been a little before examining Sir John Houston, in a cause at his Lady's instance, and had left it to the clerks and lawyers to finish when he was called to the Inner-House; that after he was gone, upon a question being proposed by Mr Brown, Sir John had called him an impertinent or insignificant puppy, and that a squabble had like to have ensued had they not been separated. The President on being shown this, immediately hushed the House, and we sent two macers with a signed warrant to search for and apprehend Sir John, and bring him before the Court; and in a very little time they found and brought him. Then the House was again hushed, and first Sir John, and next Mr Brown, separately examined. The fact was, that Brown said to Mr Thomas Hay, Sir John's lawyer, that with his leave he would put a question to Sir John; and the question being put, Mr Hay said he thought it already answered by a written correspondence that he had signed for Sir John, which he shewed him; but Brown after reading, thought the question not answered, and therefore desired to have it answered; on which Sir John turning to Mr Hay, said, "Am I obliged to answer every question that an impertinent, (or as some called it, insignificant) puppy will put to me." Whereupon Brown took Sir John by the nose and squeezed it about, and then they were both seized and separated by those present. As the day was far spent before the examinations were finished, we committed Sir John to the tolbooth of Edinburgh, and Brown to the Canongate till this day, and ordered the persons present to be cited to attend; and this day we again hushed the House and examined the witnesses, none being allowed to remain but these two, and a friend or two with Sir John. The fact came

out as above, only one witness said, that Sir John, after his nose was pulled, put his right hand towards his sword, when he was gripped. We then removed them to consider of the case, and at removing, Sir John left a signed paper, begging pardon of the Court, and wishing no further censure might be inflicted on Mr Brown; and a little after Mr Brown also sent in a paper much of the same sort. In advising, it was agreed, that before resolving on the censure, the President should acquaint Sir John, that of himself it was expected that he would ask pardon of Mr Brown for the injurious expression, and promise that he would retain no further resentment of what had passed; and as the promise was made in face of Court, they would look upon it as made upon honour, though that was not a style the Court used; and that Mr Brown should be acquainted, the Court expected that of himself he would ask pardon of Sir John, and make the like promise. Sir John said, "if the Court would order him, he would do any thing in obedience to their order, but had nothing of himself to acknowledge;" and after being again and again pressed, he said to Mr Brown, "Since the Court desires it, I, in obedience to them, beg your pardon;" and Mr Brown immediately answered in substance, "that he was sorry for what had happened, and since you beg my pardon, I also beg your pardon; and if Sir John is willing to promise that there shall be no more of it, he was ready on his part to make the like promise;" but Sir John, after a good deal of speaking, refused to make any promise; and thereupon, as it was then two o'clock, and the Court afterwards to be held, we remanded Sir John back to prison, and ordered Mr Brown to appear to-morrow at ten o'clock. And 12th January, Sir John and Brown both promised to keep the peace; and thereon we pronounced sentence, fining each of them in 500 merks to the poor's-box, and each of them to find bail with one or two cautioners, (under the penalty) to keep the peace both in general, and with one another for two years, under the penalty of L.500 sterling, to be paid in case of contravention to any of our clerks, to be disposed of as the Court shall direct.

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1749. *December 13.*

FRIENDLY INSURANCE COMPANY *against* The ROYAL BANK.

No. 50.

IN a process between the Insurance Office and the Royal Bank, so many of the Lords were concerned in the one or the other Company, that if they were declined there did not remain a quorum; and therefore they were not