

DIVISION XV.

Conservator of Campvere.

No 378.

1760. June 27.

HOG *against* TENANT.

It was questioned whether the Court of Session had a jurisdiction in the first instance over natives of Scotland, residing at Campvere. *Argued*, That the view of our statutes in establishing the jurisdiction of the Conservator was to prevent parties residing abroad from being put to the charge of pursuing or defending actions in Scotland, which would be defeated, if the jurisdiction of the Court of Session was sustained in the first instance. *Answered*, All natives of Scotland are subject to the *forum originis*. THE LORDS sustained the jurisdiction of the Court of Session in the first instance.

Fol. Dic. v. 3. p. 355. Fac. Col.

* * This case is No 2. p. 4780, *voce* FORUM COMPETENS.

* * Conservator's decrees, whether subject to the review of the Court of Session; see Div. 4. *b. t.*

* * * See No 7. p. 4433. and No 5. p. 6824.

DIVISION XVI.

Commissioners of Supply.

1772. December 18.

The DUKE of GORDON and Others *against* The COMMISSIONERS of SUPPLY for the Shire of Banff.

No 379.
Interposition
of the Court
upon a com-
plaint against

THE Duke of Gordon and others complained, by a bill of advocation, of the proceedings of the Commissioners of Supply of the shire of Banff, upon an application made to them for a division of a *cumulo* valuation, as dilatory and frustraneous; in so far as that, after a proof led, and when matters were fully prepared, in

place of proceeding to the division upon the 7th current, they had pronounced the following interlocutor: 'The meeting having considered the proof, with the rentals thereof, made out by Mr Ross, (agent for the Duke of Gordon), and whole former procedure in the cause, they make avizandum therewith until the 23d February next, to which day the meeting was adjourned.'

Judgment was given upon the bill of advocation as follows:

'THE LORD ORDINARY, after advising with the LORDS, refuses this bill at the instance of the Duke of Gordon and others; but remits the cause to the Commissioners of Supply, with this instruction, that the Commissioners of Supply, for the shire of Banff, or any five of their number, do meet at the town of Banff in the place where their meetings are commonly held, upon Thursday the 7th day of January next, by 10 o'clock in the forenoon, and not sooner, and do proceed directly to expedite the division of the valuation of the several lands contained in the petition to them at the instance of the complainers; and, in order that the same may not be disappointed or postponed improperly, that the said Commissioners, or their quorum foresaid, at the said meeting, do forthwith take under their consideration the proof that has been already adduced of the real rents of their several lands, with any objections that may be stated thereto, and to proceed and determine upon the same, unless the complainers shall insist to adduce any additional proof, by laying further evidence before the said commissioners, either by writ or witnesses; in which case, that the said Commissioners do proceed to receive such evidence in writ, or examine such witnesses as shall be adduced, reserving the consideration of any objections till the proof be concluded, and then to proceed immediately and determine upon the said objections and import of the proof, and in the division accordingly; and, if the Commissioners shall find it necessary to adjourn their meetings, by reason that a quorum of five of their number cannot be got to continue together till the affair be concluded, in that case the adjournment shall be made to the first day thereafter, that any five of the said Commissioners shall declare their willingness to attend at the same place and hour, in order to proceed in the said matter with dispatch; and, if any further adjournment or adjournments shall be found necessary for the want of a quorum willing to sit longer, that the same shall be made according to the rule above mentioned; and that no other business be taken up by the Commissioners at the said meetings till the division of the complainers' lands be concluded; and that no adjournment made by the majority of any of the said meetings do hinder or prevent any five Commissioners who are willing to proceed in the division, in terms of the instructions aforesaid. And, lastly, that the clerk, by himself, or a deputy for whom he shall be answerable, do attend the meetings regularly, while a quorum of five Commissioners continue together in said affairs; and the LORD ORDINARY ap-

No 379.
Commissioners of Supply for dilatory procedure in the division of a valuation.

No 379. ' points the complainers to give public intimation of the appointment of said
' meeting by advertising the same.' See MEMBER OF PARLIAMENT.

Reporter, *Alva*.

Clerk of the bills.

Fol. Dic. v. 3. p. 359. Fac. Col, No 42. p. 112.

DIVISION XVII.

Town Council of Burgh, and Bailie Court.—Burgh of Barony.

1663. *June 18.*

FRANCIS HAMILTON *against* MITCHEL and KEITH.

No 380.

SIR ALEXANDER KEITH of Ludquharn being obliged by bond to Robert Mitchel in Leith, for the price of certain bolls of victual, was arrested in Leith, till he found Francis Hamilton cautioner as law will; and both being pursued on the act, raised advocation on this reason, that the Bailies of Leith had unjustly forced him to find caution as law will; he not being dwelling in Leith, and Leith not being a burgh royal, but a burgh of barony. It was *answered*, That the privilege and custom of the town of Edinburgh, was to arrest within Leith, and all other privileges and pendicles thereof.

THE LORDS found that it behoved to be condescended, in what place of Leith Ludquharn was arrested; for the Pier of Leith was a part of the burgh royal of Edinburgh, and was served by a Bailie of Edinburgh, called the Water Bailie, and if he was arrested there, it was valid; but the rest of Leith is but a burgh of barony, and in that part thereof, the Bailie is called Baron Bailie, it were not valid.

Stair, v. 1. p. 192.

No 381.

1677. *February 22.*

LAW *against* DICK.

For what
kind of debts
Magistrates
may sum-
marily arrest,
till caution
be found.

JOHN LAW having sold to Robert Dick a bargain of bear, which befel to John, as a part of his father's stipend, he having found Robert Dick in Edinburgh, arrested him till he found caution to answer as law will, for payment of the victual. Dick gave in a bill of suspension, on this reason, that by the act of Parliament anent the privilege of royal borrows, they are prohibited to ar-