

the jurisdiction, yet it is not necessary, as the jurisdiction is founded by the situation of the effects locally within the territory.

In the answer, written by Alexander Garden, it was contended that it would be time enough to condescend on effects, when the interlocutor as limited by the Ordinary became final, the argument in the petition being inconsistent, as even arrestment could not be used without previous citation.

It does not appear by any notandum upon the printed papers whether the petition was refused or not.—EDITOR.

No. 2. 1736, July 14. ROBERTSON *against* POTTER.

THE President said he remembered while he was at the Bar, the Lords several times in suits at the instance of strangers obliged them to find caution in the re-convention against them. I also thought the Lords may *causa cognita* ordain such caution at the instance of parties not residing within the jurisdiction of this Court, yet I thought there was no reason for it here where the reason of reduction was proved, and the proof only allowed to prove Robertson's defence;—and upon a division it carried no caution.

No. 3. 1739, July 19. ROBERTSON *against* POTTER and HORN.

See Note of No. 6. *voce* FACTOR.

No. 4. 1745, June 11. WESTCOMB *against* DODDS.

DODDS pursued adherence and aliment against Westcomb who once had an office in Exchequer, but which he resigned several years ago; and as he was originally an Englishman, so now he resides there; but the pursuer alleged she was married to him while he resided here, but after he gave up his office, though she says she did not know it. He compeared by his procurator in the Commissary Court, and declined the Court, as being not subject to that jurisdiction. They repelled the declinator, and the question was brought before us by advocacy. Tinwald thought this being *locus contractus* it founded the jurisdiction, especially being a *questio status*. Arniston was of the same opinion, because of its being a *questio status*. The Lords sustained the jurisdiction by a great majority, *renit.* President, and Minto, Ordinary.

No. 5. 1749, June 8. COUNT ANTONIUS LESLIE *against* GORDON.

COUNT ANTONIUS LESLIE having carried the succession to the estate of Balquhain by an appeal to the House of Lords against a judgment given by us in favours of Major Leslie of Pitcable, the Count as heir of entail raised reduction of a settlement of a part of the estate made by the last Balquhain in favours of his brother-uterine James Gordon, and failing him of his two sisters-uterine, whereof the eldest is now Lady Forbes, as made contrary to the limitations of the entail of the estate. James Gordon being excepted from the indemnity and a bill for high treason found against him, no compearance was made for him, but it was made in name of his two sisters substitutes, who objected to the Count's title, that he was incapable to succeed to land in Scotland as an alien born out

of the King's allegiance and not naturalized,—2^{do} as Papist. The pursuer objected to the Ladies' title to oppose his reduction, that they were not called, and that it was a substitution at large, alterable at pleasure, and gave them no right. All the questions were reported by Drummore last Session, and the defenders undertook to produce a factory or mandate from James Gordon, and the Court remitted the objection of Popery to the Ordinary to enquire what was the pursuer's age, and appointed the other point to be heard Tuesday last,—and then a factory was produced by him to his Lady to uplift the rents of this estate, appoint factors, set tacks, &c. which was objected to as not sufficient to defend against this process. Some of us, particularly the President and I, thought the Ladies substitution was no sufficient title to defend, being alterable at pleasure. But we all agreed that the Lady's factory was a sufficient title to defend against a reduction of Cowhardie's right to these lands, as it was undoubtedly to maintain his possession, and as every tenant having a tack from him had interest to defend against the reduction, much more had the factor who had power to grant these tacks; and therefore they proceeded to debate the general point, whether an alien can inherit lands in Scotland? as to which *vide* the papers. The pursuer's lawyers were not quite agreed whether an heritor in Scotland must be a *ligius homo*, owe allegiance to the King or not. Lockhart seemed to think that not necessary. But then there was a glaring obstacle, that there could be a King's vassal proprietor of lands in Scotland, and yet no subject of the King's, nor subject to his laws, nor who owed any allegiance to him, and who consequently could not be guilty of treason, nor be punished, or forfeit as a traitor, and though if he came to Scotland he might owe a temporary allegiance, that would vanish as any other stranger's upon his going away, and he and his successors might continue proprietors without ever being in Scotland. Craigie again maintained that he would owe allegiance and be entitled to protection and all other privileges as a natural born subject, and consequently to elect or be elected to Parliament, though by the act made some years ago naturalization in Parliament cannot give a foreigner right to hold any office or to sit in Parliament. But then the purchasing a warehouse or cellar, or a cottage and yard, not only would before the Union, give any foreigner all the rights limited even by statute to Scots subjects as the making and transporting salmon, herring, and cod-fish, by the 2^d act 1705, &c. but also now since the Union it would give him all the privileges of trade, holding offices, sitting in Parliament, &c. that a British subject can have, and more than an act of naturalization can now give. In the argument, there were quoted for both sides Craig *De Feudis* in divers places where his whole reasoning is against aliens, but concludes that he is quite uncertain as to the practice, and a decision from HARCARE, INFERTMENT, No. 595, March 1683, Creditors of Kincardine against Heere Van Somerdyke, (DICT. No. 1. p. 4635, and the pursuer quoted M'Kenzie's observations on R. M., act 1558 naturalizing Frenchmen, and 7th act 1669, who at the same time hardly gives any opinion. On the other hand to prove the necessity of naturalization, the defenders appealed not only to these two acts but to many acts of naturalization, some by the King, some by the Parliament from 1537 down to the Union, and one gift by the Crown to Herriot's Hospital of land belonging to a stranger dying here, because there were no heirs within the kingdom,—and they quoted many lawyers to prove that such was the Roman law, feudal law, the laws of all the nations in Christendom, and that by the principles of law a man could not be the subject

or liege-man of two different States, (though that certainly does not hold, for a naturalization in one State does not excec the person from the allegiance he owes to the State where he was born,)—and the pursuers were forced to give up both the old Roman and feudal laws, only said that this last was local, and varied in different countries, and that succession was a natural right which could not be refused without some statute or custom. The defenders admitted that aliens may purchase and even testate on moveables, (as they also may do in England, though they strictly adhere to the law that strangers cannot succeed in heritage) and quoted an old statute for it, Stat. Gul. Cap. 30. The Court unanimously found, that an alien could not by the law of Scotland succeed to heritage without being naturalized, and found that the pursuer is an alien,—for it was disputed, that since his grandfather was originally a Scotsman, though both his father and he were born in Germany and never were in Scotland, yet he was a Scotsman, which we repelled without any difficulty.

I should also have noticed, that the pursuer founded on the former judgment with Major Leslie not as *res judicata*, for the parties were different, and this point never pleaded. But as the Court knew that the Count was a foreigner, it was *pars judicis* to notice it though not pleaded. I should also have noticed, that the defenders quoted for them Craig in his book *De Successione*, which is much more positive against aliens than his treatise *De Feudis*, though the purpose of his book was to maintain King James's right of succession to the Crown of England.

FORFEITURE.

No. 1. 1734, July 5. JAMES LORD OXFORD'S FORFEITURE.

THE Lords adhered. My reason was, that the Clan Act provides that no conviction or attainder shall hurt or prejudice the right or diligence of any creditor, whereby I thought the case was to be considered as if there had been no attainder.

No. 3. 1740, July 8. EARL of SUTHERLAND *against* ROSS.

THE Lords found, that for preserving the pursuer's casualty of recognition, it was necessary for him to enter a claim thereof before the Commissioners appointed to enquire into the forfeited estates, and that notwithstanding his right as superior of the lands subject to the recognition by the act 1^{mo} Geo. for encouraging superiors, &c.—and found that no sufficient claim thereof was before them, and therefore found that he cannot now insist in this declarator of recognition. The first carried by a good majority, but the second only by the President's casting vote.—24th June 1741 Adhered.

No. 4. 1740, Nov. 14. HUME of Billie *against* HUME of Ninewalls.

NINEWALLS being by decreet-arbitral bound to pay 4000 merks to Hume of Wedderburn for the superiority of some land which Wedderburn was decerned to dispone to