

P E N A L T Y.

1549. March 22.

HOME *against* HEPBURN.

IN causa Georgius Home de Broxntouth *contra* Jacobum Hepburn de Kirklandhill, Dominum de Waddel et alios duos penes 4 lib. monetæ Scotiæ sibi promiss. per illos pro portionibus, viribusque, casu quo, infra certum tempus non deliberaverunt dicto Georgio quendam Anglum ad personam ipsius Georgii, in qua re ipsi defecerunt et exceperunt, quod dicta summa apposita erat nomine pœnæ adjecta, et quod de practica Scotiæ pœnæ non prestantur nisi quatenus interest, et ipsi offerebant interesse actoris in hoc casu, et ejus liquidationem petierunt ab eo ipso; quia hoc casu pœnam simpliciter petebat. Interlocuti sunt domini in re presenti, penes deliberationem angli promissam sub pœna, hanc pœnam præcise peti posse in odium anglorum, in favorem republicæ, nec actorem cogendum accipere interesse, cumque in hoc casu difficillima foret probatio ipsi actori. Et ita definitive condemnarunt reos in dicta pœna, licet regulariter, extra hunc casum, de practica regni, pœnæ conventionales non possunt exigi, nisi quatenus interest actores, quia sapiunt quendam usuram et inhonestum questum, quod de jure canonico vide in cap. "Suam," exa. de pœnis, et in cap. "Abbas," exa. de iis quævis metusve causa gesta sunt.

Fol. Dic. v. 2. p. 53. Sinclair's MS. p. 96.

1622. November 29.

SEMPLÉ *against* SEMPLÉ.

MR GEORGE SEMPLÉ having charged Bryce Semplé as cautioner to pay a sum contained in a bond made to Mr George for the penalty, the letters were found orderly proceeded for the principal sum of 500 merks. The question be-

No 1.

Conventional penalties no further eligible than for the real damage.

No 2.

Penalty modified against a cautioner in a bond to the ordinary au-