

1795. June 17.

MANSFIELD, RAMSAY, &amp; Co. against SMITH, WRIGHT, and CRAY.

No 50.

THE LORDS found, that an arrestment on a summons of constitution without a previous arrestment *jurisdictionis fundandæ gratia*, was a legal interest in a process of multiple-poining already in dependence, for the distribution of the moveable effects belonging to an English company which were situated in Scotland.

Fol. Dic. v. 3. p. 249. Fac. Col.

\*.\* See this case No 44. p. 2594.

## S E C T. V.

## Reconvention.

1628. February 9.

KIRKHEAD against NAIRN.

No 51.

IN an action betwixt Gerard Kirkhead, procurator for an Englishman, against Mr William Nairne, minister at Dysart, for payment of a sum contained in his obligation, the defender desiring, that the pursuer should be compelled to find caution to him *judicio sisti et judicatum solvi*, in the pursuit of reconvention, which he had to intent against this pursuer's constituent, whose procurator he was, *et cujus nomine agit*, seeing he was a stranger, and not subject to this Scottish jurisdiction, and that, both of the law and equity, he ought to be answerable to the defender in his reconvention, the LORDS sustained the action at this procurator's instance, and found no necessity that the procurator should find caution to answer in the defender's reconvention against the procurator, as representing his constituent: But here it is to be considered, that there was no action intended against the procurator, as representing the constituent, which if it had been done, I think albeit the LORDS found, that the procurator could not be holden to find caution, yet they would not have refused to have ordained himself to be answerable, so that whatsoever he should recover by this process against the defender, the same should remain liable to the defender, in his reconvention, but there was found here no necessity of this, seeing the defender had not intended any action as he might have done.

The procurator for a foreigner, pursuer, was found not obliged to find caution *judicio sisti et judicatum solvi*, in an action of reconvention, proposed to be raised at the instance of the defender.

Act. Russel.

Alt. Nairn.

Clerk, Gibson.

Fol. Dic. v. 1. p. 329. Durie, p. 343.