

No 2.

to depart out of the country, which, on some occasions, strangers are obliged to do; yet, so far they go, to presume the sense of the nation; and a variety of them were specified in this case.

The opinions of our lawyers also tend to support the same doctrine, particularly Craig, the only author who has *ex professo* wrote on the subject. It is true, that after he has laid down the doctrine of the feudal law, and civil law, and laws of most nations, as excluding aliens from succeeding or being succeeded to, he speaks with some uncertainty as to our custom. *Vide* Lib. 1. Dieg. 8. *De his qui feudum acquir. poss.* which can be no otherwise accounted for, but that being at that time a great advocate for the succession of the King of Scotland to the Crown of England, he appears unwilling to admit the law of Scotland to stand so, though according to his own general rules laid down in his Dieg. 6. Book 1. *Quo jure Scoti hodie utuntur*, he fell to have pronounced the law of Scotland to stand so. But having afterwards got a clearer light into that controversy, and become satisfied that the succession to kingdoms stood upon a different footing from that of the succession among subjects, and upon which distinction he puts his argument in his book, thereafter, *ex professo*, written upon the King of Scotland's right to succeed to the Crown of England, against Parsons the jesuit, who assumed the name of Dolman, he in plain and strong terms asserts, that with us, aliens neither do succeed, nor are succeeded to, L. 1. Cap. 2.

And *lastly*, Now that by the Union, communication of trade is granted to all the subjects of Scotland; and that by the law of England it is undoubted that an alien cannot succeed; it would be absurd, for the first time, to find he could succeed in Scotland; whereby an alien might, by possessing a bit of ground in Scotland, be entitled to the communication of trade as a British subject.

Kilkerran, (FOREIGN.) No 6. p. 207.

S E C T. II.

What Caution exigible from Foreigners in law suits.—How far their Attornies liable for them.

1716. January 6. EDWARD PEARSON against JAMES MAXWELL.

No 3.

A foreigner being arrested in jail on a caption, of-

MR EDWARD PEARSON being arrested in the tolbooth of Edinburgh, on a caption raised upon an accepted bill of exchange, he offered a bill of suspension on sufficient caution, which was passed; but thereafter offered a new bill upon

juratory caution, and with it a petition to the Lords, desiring the reasons to be reconsidered, whereof the chief reason was, that he was imprisoned by the Government upon suspicion of disaffection; and having cleared himself of that suspicion, he could not be detained by virtue of any arrestment upon a caption for civil debt, but ought, *ante omnia*, to be put into the same state of liberty he was in when seized by the Government; and this was the ordinary practice of the Privy Council of Scotland, who never suffered any prisoner of State to be detained for civil debt; which was more necessary in the petitioner's case, because he was a stranger, having his residence in Ireland, and in no condition or capacity to find caution in Scotland; and therefore his suspension ought to be passed on such caution as he can find.

It was *answered*, There is no need in this case to consider the general point, how far a prisoner of State may be arrested for civil debt; because the defender is in a special case, in as far as being a stranger having no estate or residence in Scotland, and yet having accepted a bill, payable at Dumfries in Scotland, if he be set at liberty without sufficient caution, the sum would be lost to the charger; and albeit, by the common course of diligence, parties are at liberty till caption be raised on bonds, bills, or decreets, yet in special cases, where parties are lurking, or are strangers, the Lords are sometimes in use to give warrant to secure such parties, for preserving the just interest of lawful creditors, unless they find caution *judicatum solvi*. And no case can be found more favourable than this, the bill being accepted payable in Scotland, and the party a stranger, ready to withdraw his person long after the term of payment of the bill, and ultimate diligence upon it.

'THE LORDS adhered to their former interlocutor allowing suspension to be expedite on sufficient caution only.'

Dalrymple, No 155. p. 214.

1738. June 16.

PRINGLE *against* KENNEDY.

ONE constituted factor by a foreigner for levying debts due to the foreigner here, having insisted in name of his constituent for payment of a debt which, during the course of the process, was proved to have been already paid to the foreigner himself; the LORDS found the factor liable in expenses; though it was urged as quite unprecedented, that agents or factors, whether for natives or foreigners, should be found liable for expenses occasioned by their constituent's fault; that the proper remedy when a foreigner gives mandate to pursue, is to insist for caution, *in initio litis*; and where that is omitted, the defender has himself to blame. See APPENDIX.

Fol. Dic. v. 1. p. 324.

*** In the same manner was decided the case of Horn against Robertson, 1739, July 25. See also APPENDIX.

No 3.

ferred a bill of suspension on sufficient caution, which was passed, and thereafter offered a new bill on juratory caution. The Lords allowed the suspension to be expedite on sufficient caution only.

No 4.