ſaid John Riddoch, for Catherine Lyon, or to the ſaid Catherine Lyon, the ſum of 40l. *for her coſts and charges cauſed by the ſaid appeal.*

Two days after the date of this order, the ſtanding order of 26th January 1710-11 relative to recognizances was made, which directs that appellants ſhall enter into recognizance of the penalty of *one hundred pounds* within 8 days after the appeal received, to pay ſuch coſts as ſhould be awarded.

On the 17th of March 1710-11, Catherine Lyon preſented a petition to the Houſe, ſtating that Lady Kinnaird had been ſerved with the former order, and refuſed to obey the ſame, of which the petitioner produced affidavit.

Journal, 22d March 1710-11.

It is ordered that theſe words be added to the former order, viz. " *And that the Lords of Council and Seſſion in North-Britain do* " *order the* 40l. *coſts, given by this Houſe to Catherine Lyon, to be* " *levied by the ſame rules and methods as coſts given by them are to* " *be levied.*"

Caſe 6.

Fountainhall, 8th Nov. and 30th Dec. 1709.

James Greenſhields, Clerk, - - *Appellant*;
The Lord Provoſt and Magiſtrates of the City of Edinburgh, - - *Reſpondents.*

1ſt *March* 1710-11.

Appeal.—An appeal competent, though objection made that it implicated the ſentence of a preſbytery.

Kirk Government.—Proceedings againſt an epiſcopal miniſter, before the Toleration Act, 10 Ann. c. 7. who had been impriſoned for exerciſing his function, reverſed on appeal.

THE appellant, by birth a Scotſman, in 1709 opened a private chapel in Edinburgh, where he exerciſed a miniſterial function to ſome members of the communion of the Church of England. The Preſbytery of Edinburgh ſummoned him to appear before them, and to " give an account of himſelf, and of his preſuming " without authority to exerciſe the office of the holy miniſtry " publickly on the Lord's day." He appeared accordingly, and produced to the Preſbytery a diploma of his ordination as a preſbyter *ſecundum ritus et formas Eccleſiæ Scoticanæ* from the Biſhop of Roſs in Scotland, but dated in 1694 after abolition of epiſcopacy in that country: and he ſtated that his orders had been allowed in Ireland, where he had taken the oaths to government, and ſerved two curacies with a fair reputation, of which he produced a certificate from the Archbiſhop of Armagh, and ſome of his clergy: but he declined the juriſdiction of the Preſbytery. They thereupon prohibited him from exerciſing the office of a miniſter, for the reaſon of its " being within their bounds, and without " their

" their allowance, and introducing a form of worſhip contrary to " the purity and uniformity of the church eſtabliſhed by law." And they recommended it to the magiſtrates of Edinburgh to render this prohibition more effectual.

The reſpondents, in conſequence of this recommendation, and of a petition (as they ſtate in their caſe) *ſigned by many hundred hands of the moſt conſiderable in the neighbourhood*, cited the appellant to appear before them; and on his appearing they required him to obey the act of the Preſbytery. The appellant, however, ſtill continued in the exerciſe of the miniſtry as before, and the magiſtrates by their ſentence on the 15th of September 1709 ordered him to be committed to gaol, " there to remain until he ſhould " give ſecurity to deſiſt from the exerciſe of the miniſtry within " their bounds, or to remove himſelf from thence."

The appellant being accordingly committed to priſon, he preſented a bill of ſuſpenſion to the Court of Seſſion, to which the reſpondents put in anſwers, inſiſting " that the ſuſpender having " received ordination from the Biſhop of Roſs after the abolition " of epiſcopacy in Scotland, and the ſaid biſhops being exauctorated, the ſuſpender was not a miniſter duly qualified." In reſpect of theſe anſwers, the Court on the 8th of November 1709 " refuſed the bill." The appellant having preſented a ſecond bill of ſuſpenſion, to which the reſpondents made anſwers, the Court on the 28th December 1709 alſo refuſed the ſame. And the appellant remained in priſon *ſeven months*.

The appeal was brought from " the ſentence of the magiſtrates " of Edinburgh and a decree of the Lords of Seſſion, the firſt the " 15th of September, and the laſt the 28th of December 1709,"

Entered 13 February 1709-10.

A preliminary queſtion aroſe, whether the appeal was regularly and properly before the Houſe or not; and leave was given to argue this queſtion in the firſt place.

Argument of the Reſpondents on this preliminary Point.

There is no place for this appeal from the Preſbytery of Edinburgh: the Preſbytery is only a ſubordinate eccleſiaſtical judicatory, from which appeals lie in courſe to a provincial ſynod, or the general aſſembly. The appellant cannot in law or good order appeal to the Houſe of Lords, who are only judges upon appeals in the *laſt reſort*.

If this appeal ſhould be held to lie from the ſentence of the Preſbytery, the appellant has not ſummoned or called the proper reſpondents: the ſentence of the Preſbytery cannot be reviewed unleſs they themſelves be called to anſwer for it; and the reſpondents are not the proper parties to make anſwer in this caſe.

Although the appellant pretends only to appeal from the decree of the Court of Seſſion, and the ſentence of the reſpondents, it is evident that he directly libels the ſentence of the Preſbytery as groundleſs and illegal, and therefore to be reviewed; which is in fact

fact an appeal from it. It is manifeſt, that the ſentence of the reſpondents was purely executive; and they were no further concerned, than to make the ſentence of the Preſbytery effectual, as they were obliged to do by law, (particularly by the act of Parliament 1693, c. 22. for ſettling the peace and quiet of the Church, whereby it is expreſsly enacted, "that all magiſtrates, judges, "and officers of juſtice give all due aſſiſtance for making the "ſentences and cenſures of the Church and judicatories thereof "to be obeyed,)" without inquiring into the reaſon of that ſentence, which was wholly *alterius fori*, and not liable to their cognizance. The reſpondents therefore cannot be queſtioned for what they did in obedience to law, unleſs they had exceeded their authority in the execution; which they did not, nor is it pretended by the appellant that they did.

But if the magiſtrates had exceeded in the execution, the appellant had the obvious remedy, which in fact he laid hold of, viz. to complain to the Court of Seſſion by bill of ſuſpenſion. It is certain in law, that no appeal can be made from the execution of any ſentence, unleſs the appeal be firſt brought from the ſentence itſelf; and it is ſuppoſed that the ſame doctrine holds in the Church of England, when writs are iſſued of courſe for executing eccleſiaſtical ſentences, as the writ *de excommunicato capiendo*, from which though it be a civil writ, yet being in execution of the ſentence of an eccleſiaſtical court, there lies no appeal, unleſs the ſentence itſelf be firſt reviewed by the proper judicatory.

Before the late Union of the two nations, it was never known that any appeal from the eccleſiaſtical judicatories of the Church lay properly or regularly to the Parliament of Scotland, nor can any precedent of ſuch appeals be produced.

Journal, 2ſt March 1710-11. The appellant's argument on this preliminary point does not appear; but counſel being heard upon this preliminary point, *Reſolved, that the petition and appeal of this appellant is regularly and properly before the Houſe.*

On the Merits. Heads of the Appellant's Argument.

Though Preſbytery be the legal eſtabliſhed church government in Scotland, yet there is no law of conformity in that country which obliges the laity to be of their communion, nor any law which prohibits the miniſters of the communion of the Church of England from exerciſing their function, or the laity from joining in worſhip with them in a private manner, or which gives the magiſtracy any juriſdiction to inflict penalties on ſuch miniſters or laity. The acts of Parliament on which the ſentences againſt the appellant are pretended to be founded, and particularly the 1695. c. 22. act 1695, c. 22. againſt intruſion into churches, were never intended againſt perſons in ſimilar circumſtances with the appellant. The appellant never intruded into any church or benefice, or deprived any perſon of his right, but exerciſed his function only in a private

a private houſe to thoſe of the ſame communion with himſelf. Nor is impriſonment warranted by any of the ſaid acts.

The Court of Seſſion ought only to have affirmed or reverſed the ſentence of the magiſtrates for the reaſon upon which it was founded, namely, that contained in the act of the Preſbytery; and they ought not to have proceeded to judgment upon any new reaſon.

And even if the Court might have founded their judgment upon a new reaſon, yet their decree, as to ſuch new reaſon, is contrary to the principles and practice not only of the Chriſtian Church in general, but alſo of the preſent Church of Scotland, which admits Preſbyters ordained by exauctorated Preſbyters, and alſo Preſbyters ordained by Biſhops in ſimilar circumſtances with the appellant, whoſe ordinations have been allowed, and themſelves admitted to the cure of ſouls, as rightly ordained.

Heads of the Reſpondents' Argument.

The reſpondents rely for a full juſtification of the proceedings both of the Preſbytery and themſelves againſt the appellant, by the following acts of Parliament, which are all unalterably confirmed by the Union; viz.

1. The act W. & M. 1689, c. 3. intituled, "Act aboliſhing "Prelacy." W. and M. 1689. c. 3.

2. The act 1690, c. 5. intituled, "Act ratifying the Confeſ- "ſion of Faith, and ſettling Preſbyterian Church Government." 1690. c. 5.

3. An act 1693, c. 6. intituled "Act for taking the oath of "allegiance and aſſurance." 1693. c. 6.

4. An act 1693, c. 22. intituled, "Act for ſettling the peace and quiet of the church." 1693. c. 22.

And alſo by a proclamation of the 21ſt of March 1706, intituled, "An act and proclamation anent intruders into churches," by which (*inter alia*) "the queen and the lords of her Majeſty's "privy council, prohibit and diſcharge all perſons, who have no "authority from within the church of Scotland, but pretend to a "warrant or licence from the late exauctorat biſhops, ſince they "were exauctorat, to exerciſe any part of the miniſterial function, "within this church, or any kirk or paroch thereof, upon pain "of being ſeized and ſecured by the magiſtrates of the bounds, "in order to their trial, purſuant to the act of parliament of "1693, and the magiſtrates are required to ſeize and ſecure ſuch "perſons, and puniſh them according to law."

And after hearing counſel on the merits, *It is ordered and adjudged, that the ſentence of the magiſtrates of Edinburgh, and the decree of the Lords of Seſſion in North Britain, made againſt the ſaid James Greenſhields, be reverſed.* Judgment, 1ſt March 1710-11.

For Appellant, *Tho. Lutwyche, Hum. Henchman.*
For Reſpondents, *Peter King.*

Soon

Soon after the deciſion in this appeal, an act of parliament was paſſed, 10 Ann. c. 7. intituled, "An act to prevent the diſturbing "thoſe of the epiſcopal communion in Scotland."

Preface to the Hiſtory of the Union, p. 19 et ſeq.

It is ſtated by Defoe, that the preaching of Mr. Greenſhields excited much diſturbance in Scotland, and alarm for the ſafety of the eſtabliſhed church. Addreſſes were preſented to the general aſſembly from Edinburgh and from Haddington; and ſimilar addreſſes were preparing almoſt all over the kingdom, when the proceedings were commenced againſt Mr. Greenſhields.

Caſe 7. James Durham of Largo Eſq. - - *Appellant*;
Robert Lundine Eſq. of Lundine, Alexander Watſon of Aithernie, Andrew Lundine of Straitherlie, and John Lundine of Baldaſter, *Reſpondents.*

20th *March* 1710-11.

Appeal.—An appeal competent, from a decreet in 1698, and interlocutor in 1708, though objection made that a decreet in 1707, confirming that in 1698, was not appealed from.

Teinds.—Prorogations of tacks of teinds, where an augmentation of ſtipend was ſmall, reduced from ſix 19 years to one 19 years.

THE appellant was patron of the pariſh of Largo. In 1698, the then miniſter of Largo, during the appellant's minority, obtained decreet of the *commiſſioners for plantation of Kirks and valuation of Teinds*, for an augmentation to his ſtipend of about 14*l.* per annum, which was allocated upon the teinds of ſeveral heritors of the pariſh:—And in conſideration of this augmentation, the commiſſioners granted to the reſpondents, who were tackſmen of teinds in the pariſh, prorogations of their tacks for ſix 19 years, to commence after expiration of their current tacks, which had then eight years to run. This decreet mentioned the ſhares of the whole ſtipend to be paid by the proprietors of lands in the pariſh, part being to be paid out of the teinds of lands belonging to the appellant.

In 1707 the appellant obtained a decreet of the Lords of Seſſion againſt the reſpondents, by which their old tacks were declared to have expired in 1706, yet the decreet of the commiſſioners in 1698, for prolonging their reſpective terms, was thereby confirmed.

In 1708 the appellant brought an action before the Lords of Seſſion, as commiſſioners for plantation of Kirks and valuation of teinds, for reduction of the ſaid decreet of 1698, on the grounds that it had been obtained during his minority, that no part of the ſtipend ought to have been allocated upon his teinds, and that the prorogations granted to the tackſmen were altogether diſproportionate to the augmented ſtipend charged upon their teinds.

The