

1713. July 21.

DR JAMES GARDEN *against* MR DAVID ANDERSON Professor of Divinity in the King's College of Aberdeen.

No II.

A Professor of Divinity having quitted his office, in obedience to a sentence of the Commission of Parliament, depriving him for refusing to qualify himself, by taking the oaths to Government, and the office being supplied by another Professor, admitted thereto after the year 1703, the Lords refused to repon him on the act of indemnity passed in that year.

DR JAMES GARDEN being deprived of his office of Professor of Divinity in the King's College of Aberdeen, January 25. 1697, by the Commission of Parliament for visiting Universities, Colleges and schools, because of his refusing to qualify himself in terms of the act 17 of the Parliament 1690, by taking the oaths to the Government, and subscribing the Confession of Faith; in obedience to this sentence the Doctor quitted the office, and the same was supplied first by admitting Mr George Anderson to be Professor, and after his death Mr David Anderson. The Doctor raised reduction of Mr David Anderson's right, upon this among other grounds, that her Majesty's act of indemnity in the year 1703, took off his incapacity to exerce the office, and virtually reponed him; especially considering, that there was no Professor established before that time when he qualified himself by taking the oaths, and returned to the exercise of his office.

Answered for the defender, *1mo*, The act of indemnity concerns only crimes and delinquencies, and doth not comprehend the pursuer's case, who was not deprived for a delinquency, but for the non-performance of a condition required to qualify him to continue in the exercise of his function. *2do*, Suppose the Doctor's not qualifying in the terms of law, could be reckoned a delinquency, he being sentenced upon that account, his case falls not under the indemnity, which excepts all sentences and dooms thereof. *3tio*, All the Doctor could plead from the indemnity, had he the benefit thereof, is to free him from prosecution for his not qualifying formerly, and to recapacitate him *pro futuro*, to be admitted to any new office upon a legal call. But the indemnity could never repon him to that office of which he was deprived for disobedience to a law, and be a ground to thrust out the defender, who was legally admitted thereto; especially considering, that he did neither take the oaths within the time limited by act of Parliament, nor to this hour hath subscribed the Confession of Faith, and submitted to the government of the Church, both which are qualifications as expressly required in Professors of Divinity by the act 1690, as their swearing allegiance to the Sovereign.

Replied for the pursuer; *1mo*, The act of indemnity doth not distinguish whether sentence intervened or not; and it is the Queen's will that her indemnity be interpreted in the largest sense. *2do*, That sentences fall under the indemnity, is clear from the exceptions therein of pecunial fines and unlaws already paid and transacted, which imply, that those not paid or transacted are remitted; and the pursuer's office being then vacant, was in the case of a fine not paid. *3tio*, There is no place to distinguish the effect of the indemnity as to enabling the pursuer for a new commission, and the redintegrating his old one; for the pursuer could not possibly have any other benefit by the

indemnity, than restitution of his office; since the act of Parliament imports no inability to enjoy a new office, but exposeth the recusant to the hazard of being turned out of his present office. 4^{to}, The pursuer's case cannot be thought excepted out of the indemnity, under the clause Forfeitures, &c.; for that word abstractly mentioned is understood of forfeitures for treason; which is farther cleared from the subsequent words, 'all sentences and dooms,' that can be applied only to sentences of forfeiture for treasonable crimes.

No 11.

THE LORDS sustained the defence, and assolizied the defender from the reduction.

Fol. Dic. v. 1. p. 462. Forbes, p. 705.

1729. July 29. JACKSON *against* MAGISTRATES of Edinburgh.

No 12.

THE Magistrates of Edinburgh having, during the rebellion 1715, caused pull down a house in the suburbs for better securing the town against enemies attacks; in an action at the proprietor's instance against the Town for reparation, the LORDS found the said action was sopite by the act of indemnity *anno primo Georgii*; though it was *argued*, that the act of indemnity was only calculated for crimes and offences; not at all to bar civil reparation arising from a fact justifiable in itself, and done for the benefit of the public. See APPENDIX.

Fol. Dic. v. 1. p. 462.

See APPENDIX.