

the End of February 1601 are printed in the first Volume of the Reports of Stair's Decisions. Those from that time till the End of July 1696 are published and subjoyned to the Collection of Decisions observed by the Lords Craigmillar and Newbain. And the Acts of Sederunt from 1 February 1706 till the End of July 1713 are published in my Journal of the Session intermixed with the Decisions

Alexander Bayn Advocate Professor of the Municipal Laws of Scotland in the College of Edinburgh published in the Year 1726 an alphabetical Journal and Abridgment of the printed Acts of Sederunt from June 1661 till January 1722 Which is subjoyned to Sir Thomas Hope's minor Practicks.

Decisions are the Resolutions of our Sovereign Judges in Civil or Criminal Matters, the same with Arrêts in France, and Reports in England. Decisions in Civil Matters are those of the Courts of Session and Exchequer. Which are sometimes termed practiques from the French word *pratique*. But *pratique* with us is also taken in a more extended Sense, to denote Institutes of the Law, as when we say Hope's minor Practiques. Decisions in Criminal Cases, are those of the Court of Justiciary. If Decisions continue uniform for some considerable Time they have the Force of a Law, and cannot be altered. So that a Custom by frequent Decisions, hath not only greater Authority than a single Decision, but is more effectual than Acts of Sederunt, which do easily pass into Disuse. Stair Inst. lib. 1. Tit. 1. §. 16. *verf. in the next place.* These Decisions were for a long Time the sole Directors of the young Students of the Laws of Scotland; and truly some of them were but very uncertain Guides. But the whole the Arguments on both sides seem of equal Weight the Authority of former Decisions (which are the best Interpreters of Laws. *l. 2. §. 5. ff. de orig. jur. l. 30. ff. de Legib.*) should cast the Balance: yet seeing *Nullo iudicium sententia pro jure repulantiur, & non Exemplis, sed Legis est judicandum* *l. 13. C. de Sentent. & interl.* And the Parliament only can make Laws; the Authority of Decisions is not so implicitly depended on, as to hinder the Judges to alter or depart from the same upon great and weighty Considerations

Act. 2.

By-Laws or Statutes of Corporations or Bodies-politick. If being impossible for the general Law, to provide fit Discipline for every particular Society; aggregate Bodies, as Cities, Universities, Colleges &c have Powers from their Charters, and Acts of Parliament, to make By-Laws for good Order and Discipline in the Society; provided these be not contrary or repugnant to the Laws of the Nation. *l. ult. ff. de Oblig. & Corpor.* in which all their Decisions and Determinations center, and which give a Check to any Irregularities that these Societies may at any Time commit in their respective Jurisdictions. Such By-Laws must be conformable to the Laws of the Kingdom and to good Manners, and tend to the Good of the Community, and to the Benefit which the publick ought to reap from it. Thus even by the Civil-Law of Rome, which vested the Legislative Authority in the Prince. Municipia or free Cities were allowed to enjoy their own private Laws, provided these were not contrary to the general Roman Law *l. 9. ff. ad L. Aquil. de Factis. l. 3. §. 3. ff. de Repulatis violatis.* And much more doth this hold in the Britanick Constitution, where the Power

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of making Laws belongs to the King and Parliament jointly. For seeing the power of Corporations in Relation to Magistracy, is derived from the King, they cannot make By-Laws contrary to the Laws of the Land, more than the King himself whose power was the Original of theirs can do. Acts of the Convention of Burrows are By-Laws of this Kind, *vid. vol. 3 pag. 196.* In Scotland there are also By-Laws called Laws of Burghs, or Burghs, which are an Account of the persons who have writ upon any part of the Law of Scotland *vid. Appendix pag. 47 of 1719.*

Sect. 9.

How the Law of Scotland is distinguished with respect to the Objects thereof.

The Law of Scotland raised upon the grounds and Foundations aforesaid is distinguished into Private and Publick Law. The Private Law is that which consists of Matters respecting mainly the Interests and Differences of particular persons among themselves. The Publick Law is that which primarily regards the Constitution of Church and State, in their Ecclesiastical and Civil Politics; the punishing of Criminals, and all Disturbances of the publick Tranquillity. The Objects of the Private Law to which in this first Volume I confine myself are 1<sup>o</sup> persons. 2<sup>o</sup> Their Estates, and how these are originally acquired affected with Burdens, and extinguished. 3<sup>o</sup> How such may be transmitted and passed over from one to another. 4<sup>o</sup> The Ways of determining Civil Controversies in point of Right or Possession about them

Part. 1. of Persons

The State and Quality of persons, is a natural consequence of the Order of Society, and the Matters treated of in the Law; which distinguisheth them from others by some Capacity or Incapacity. For God in his great Wisdom has thought fit to render Mankind necessary to one another, in order to engage them to the mutual Dutys required of them. and each person hath his Situation and Order in the Society of Men, according to the Use of the Functions and Dutys which Constitution requires of him towards the Publick. Persons may be considered in their Natural, and in their Relative

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