said to have been borrowed, & that the Judge unduly ad-
=mitted the Libel, tho, the Hypothecation was not made with
the Consent of the Officers & Mariners, without wch no master
or Captain has power to execute an Hypothecation Bond...

Assigned for Sentence

Case of Lee

Citation

Cen

Dr

Con the

See Fol. 48.

Non Residence

July 5

Commissary of Surry

No 26 Hewet v Kidgell

Stevens. — Dr Wynn — Dr Harris — Fountain.

Dr Collyer..

This Suit is brought agt the Revd Mr Kidgell for non Residence by Mr Hewet, who has cited Mr Kidgel, for 6 Months, to be com=puted from the time of Service (from 2 months to 2 months) to reside, otherwise, the said 6 Months being elapsed, to shew cause why he shd not be deprived of the Rectory of Horne in Surry. The Monition was returned 22d May 1765: Fountain to save the Contempt appeared for Kidgell; the Citation to appear, was not, to appear personally, & we produce an Affidt of Kerchman that a Proxy is gone over to Dunkirk to be executed by Kidgell who is there: it is daily expected, Fountain has prayd time to exhibit this Proxy, & it now comes on, at his Petition — Please to observe, Sir, that this is a Presentment agt Kidgell for Non Residence; I wish he may not repent, the Seques=trator now appears; it is an indirect method of attacking the authority of the Ept of B.R. The Sequestrator has an Interest Mr Clarke now appears for him; the Sequestrator is the person who wd be punished; for Mr Kidgell is now under an actual deprivation; the Sequestrator has all; he does not pray to officiate, to take it away from the Sequestrator; the Business is taken out of Kidgells Hands; if there is any neglect in the Person appointed by the Sequestrator to officiate, the neglect falls on the Sequestrator; his by virtue of his officiating that he is punishable for Non Residence: the Presentment alledges that no Curate has been appointed since May 1764, Supposing the Fact true, Kidgell is not in fault, he cannot appoint a Curate, the Sequestrator must do it, he is to pay him: Kidgell has nothing to do in the parish: would you then article agt him for not doing, what he must not do; if you proceed the Kings Bench will have made an ugly Writ; the Rights of the Sequestrator are a material Consideration & will be a Point to be made hereafter; the Business now, is merely that Fountain has not a Proxy from Kidgell, who has Friends that wd direct him to appear to save the Contempt, but a Proxy being now necessary he cannot proceed, till he receives one; we have an Affdt that he expects this Authority & we pray time to exhibit this Proxy; surely, Sir nothing can be more reasonable than such a Petition; the Deft is abroad & ought to have an Opportunity of defending himself: there arises an Objection from the manner in wch the Suit was begun; here is a Presentment, no Articles; that will come before the Court hereafter; but it is always usual that wherever there is a deprivation there shd be Articles —

Dr Wynne — I cant tell how many points the Dr may have to make, but this Cause has begun in a very regular manner: Causes of this kind are not very frequent: I hope many occasions are not given for Suits of this nature: the Cause was begun by Presentment of Churchwardens in Novr 1764. there needs no other Evidence, the Citation has issued upon it; he has had 3 Terms assigned him, the 6 Months are expired: he is already ipso facto deprived, & wants only a declaratory Sen=tence; the Drs Argument, that the Ept of B.R. is in proper Ordi=nary is an extraordinary Position; for if this Doctrine, that a Clergyman cannot be deprived, because a Sequestrator wd