

strain of the writ; where any thing is omitted out of the same, it is noways understood to be transmitted at all. (*Vide Cujacium, pagina 150, circa medium.*) But so it is here, there is no mention in the said clause of the gift of the Commissary clerkship, or of any power of establishing a clerk.

To thir two it was ANSWERED,—That it was sufficient the power was in any part of the gift. They were to have the Lords' answer on this.

Then ALLEGED,—*3tio, Absolvitor* from this pursuit, because it is offered to be proven, that the pursuer has homologated the right of the said office, inherent in the defender's person, and has past from any pretended right of his own; in so far as he, by a subscribed minute betwixt him and the Bishop, has acknowledged the Bishop to have a good right, and has renounced his own claim, and condescends to deliver up the registers and other writs concerning the office, providing the Bishop pay him by the space of three years, 300 merks yearly; which the Bishop is content to do. *Vide Dury, 17th February 1624, Thomson.*

To which it was ANSWERED,—That for the Bishop to found on that minute, is *propriam turpitudinem detegere*; because it is offered to be proven, that when the act of restitution of Bishops was making, the defender sent frequently for the pursuer, and showed him how the King and Parliament were about the restoring of Bishops, *in integrum*, to all their former privileges and concessions, and the cassing and annulling of all provisions to offices procured in the time of the troubles. *Item*, presently on the making of the act, he caused double the same; only he kept out the *salvo* that was made in favours of commissaries, their clerks, and others who were in possession of their offices; and so mutilated, did show it to the pursuer, and told him that was the act made: which false and disingenuous representation was the impulsive cause and inducement that moved the pursuer to enter in that contract with the Bishop; and he never discovered his error till the act was published, bearing *in gremio* a reserve *ut supra*.

It was REPLIED,—This was *ignorantia juris*, which excuses none, and can never liberate him of the minute, he being then *major, sciens, et prudens*, and a man that knew the law of the kingdom, at the least should have known the same.

The Lords FOUND the reason relevant to be proven, either by the Bishop's oath or the witnesses present at their communing.

*Advocates' MS. No. 54, folio 78.*

1670. *July 2.* THOMAS CRAWFURD *against* his TENANTS.

This was for mails and duties. Compeared one, who had comprised the same lands, and craved to be preferred, in respect he was in possession, in so far as he had obtained a decret of removing against the tenant possessor thereof. The Lords FOUND this decret of removing a sufficient qualification of possession; and would not suffer Thomas Crawford to reply that he behoved to be preferred to this compriser, because he had an inhibition against the common debtor, anterior to the compriser's very ground of his debt; only reserved to him reduction on his

inhibition as accords. But where he REPLIED, The compriser was satisfied, either because he had intromitted, or might and should have intromitted, seeing he debarred others having right; the Lords FOUND this relevant, and ordained them to count and reckon.

*Act. Wallace.*

*Alt. Andersone.*

*Advocates' MS. No. 55, folio 79.*

1670. *July 2.* GEORGE MONTEITH *against* GEORGE ACHESONE.

THIS was a pursuit, for making payment of some money contained in a precept drawn on the defender, and accepted by him; as also for sundry other particulars which I do not remember.

*Advocates' MS. No. 56, folio 79.*

1670. *July 2.* PENNICUIK, Chirurgeon, *against* HAY.

THIS was a charge on a bond. The reason of suspension is, The bond is null; it wants witnesses. ANSWERED, he produces also the suspender's letter, acknowledging the debt. REPLIED, the letter *laborat eodem vitio*, and so cannot prove. DUPLIED, he refers the truth of the subscription to the suspender's oath. This was found relevant.

The second reason is, That as a bond granted by a minor having curators without their consent is null, so a bond granted by a minor *in familia paterna* without his father's consent: but such is this bond. ANSWERED, denies he was minor; *2do, esto*, he had been then minor, he can never be free of this bond, because it is offered to be proven it was granted for medicaments furnished by the charger to the suspender in his sickness.

The Lords assign a term to the suspender to prove he was then minor; and though that were proven yet they will sustain the bond *pro tanto* as shall be proven furnished.

*Act. Dinmuire.*

*Alt. Yeoman.*

*Advocates' MS. No. 57, folio 79.*

1670. *July 2.* Anent a BOND of PRESENTATION.

ONE being charged to pay a penalty contained in his bond, by which he was obliged either to sist a certain person taken with caption, at such a precise day, or else pay such a sum; because he had faillyied in sisting the debtor:—