

1671. *December 8.* The ARCHBISHOP of ST. ANDROIS *against* PATRICK LINDSAY of Wormeston, his Commissary.

THIS was a pursuit against the Commissary for relieving the Bishop of L.303, as his proportion of the contribution-money due to the Commissaries of Edinburgh of all years since 1661, and in time coming.

ALLEGED, there can be no relief; because they have never been liable therein *de facto*, nor in law can be; neither by the decret arbitral are they, but the Bishops themselves, burdened with that 900 merks of augmentation given to the Commissaries of Edinburgh, upon the account of the loss they sustained through the want of the great testaments; and as for the old duty which was 1200 merks paid to them, the subject matter of that was ever the quots, and when the quots were in Queen Mary's hands, and after given to the Lords of the Session, this 1200 merks was ever paid furth thereof. As for the act of Parliament 1609, and the injunctions following in 1610, and the late injunctions in 1666, ordaining the Commissaries to relieve their Bishops of the contribution-money, they can never bind this defender, because the injunctions 1610 did not keep within the bounds limited for them by the act of Parliament 1609, which was only to set down the manner of the Commissaries proceeding with the forms of process, and in so far as they deviated from that they are without a warrant. *2do*, The said injunctions 1610 were never *in viridi observantia quoad* this relief. *3tio*, The injunctions 1666 are, since the defender's gift *et jus quæsitum*, which cannot be burdened without his own consent. *4to*, The most that all these acts and injunctions can infer is allenarly that the Commissary relieve him of his proportion of the 900 merks of augmented money. But there is no ground for relief of the old duty, which was ever paid out of the quots, and so by the Bishops who received them.

See the answer to this in the informations; as also about the Bishop of Glasgow's decret against his Commissary, and the act of Parliament procured by the Commissaries of Edinburgh for paying their fees out of the Bishops' rents.

After many hearings, the Lords, before answer, ordained the decret-arbitral to be produced.

Then the matter was trysted. The Commissary was content to relieve the Bishop of the whole for the future, and the Bishop was to procure to him a general discharge of all bygones from the Commissaries of Edinburgh.

*Advocates' MS. No. 287, folio 120.*

1671. *December 8.* Mr. ARTHUR GORDON *against* the LAIRD of DRUM.

IN this action it came to be debated, whether or no an executor going to the horn after the recovery of sentence against the defunct his debtors, but not of payment, whereon his escheat is gifted, if the donatar will have right to the said sums contained in the sentence yea or no? It was CONTENTED he would, because by the sentence the dominion of the executry goods was established in the person of the executor, so that he dying after sentence, they neither at-