

1710. *February 14.* The COLLEGE of ABERDEEN *against* The CRAFTS of ABERDEEN.

DR William Guild, professor of divinity in Aberdeen, mortifies 5000 merks, in 1655, to maintain three bursars at the college, to be chosen out of the sons of craftsmen, on a testificate, from the minister of St Nicholas church there, that they have engines fit for learning, and that none intrude themselves but such as are truly poor and necessitous : and names the deacons of trades in Aberdeen to be overseers and patrons of the mortification, and charges them to be faithful, as they shall answer one day to God. And requires these bursars, if laureate, to give an obligation, if God bless them with worldly means, to add something, more or less, to the mortification.

The crafts of Aberdeen not having three to present who were found qualified ; the principal and masters of the college pursue them to present other tradesmen's sons, to prevent and supply the vacancy.

ALLEGED,—By the strain and tenor of the mortification, they can only present tradesmen's sons born in Aberdeen ; and failing of such, they are not to seek them from other places in the shire ; but the rents of the mortified money goes up to increase the fund and stock, by which, in process of time, it may be able to maintain more boys than three : And to present others without the town, is a visible prejudice to them ; for, it lasting three or four years, their children are turning qualified in that time, and yet are debarred by these strangers : And the mortifier being a tradesman's son in Aberdeen, it is beyond doubt he meant only them, and no others.

ANSWERED,—They acknowledge the sons of tradesmen-burgesses there have the preference, but there is no clause in the gift restricting them to such, when they are not to be had with the qualifications required of poverty and pregnant engines. And it is known the trades have misapplied the funds. And such inversions are, by the Act of Parliament, declared pursuable *actione populari*, at the instance of any inhabitant or burgess.

The Lords found it consonant to the will of the mortifier, as expressed in the gift, That, though the Aberdeen tradesmen's sons were preferred *primo loco*, yet, *iis deficientibus*, the patrons behoved to present other qualified boys in their room.

*Vol. II. Page 567.*

1710. *February 14.* JAMES LAURIE *against* ALEXANDER CUNNINGHAM of POLQUHARN, and HEW HAY.

ALEXANDER Cunningham of Polquharn, and Hew Hay, in Ayr, being assignees by Crawford of Kerse, to L.168, owing to him by one of his tenants ; Mr James Laurie, minister at Dalrymple, competes, That, he being provided, by his decret of locality, to so much money and victual out of the barony of Kerse, he might take this tenant's rent in part of his stipend *pro tanto*.

ALLEGED,—His stipend being localled upon the teinds, he can pretend no further interest than to the fifth part of this tenant's rent, stipends being only payable out of the teinds.

ANSWERED for the Minister,—That the proportion of stipend payable out of the lands of Kerse, was without any division upon particular rouns; but indefinite, and general over the whole barony, *tanquam unum tenementum*; and so he might distress any tenant for his whole rent, to the avail of the stipend lo-called on the whole. But the truth was, here were sundry specialties: for, Kerse being broken, the rest of the rouns were lying waste, and this was only tenant-sted: and as Kerse himself was personally liable, so must his tenant be. And to restrict him to the fifth part of the rent, was to send him to lift the rest of his stipend from windlestraws and sandy laverocks; and he was not to distress them any further than his proportion of stipend laid upon these lands; and, till that was paid up, *unaquæque gleba servit*, unless the stipend had been specially divided, so much on every roun.

REPLIED,—It is unheard of doctrine, that stipends can affect the stock; and, *esto* he were a parson or titular, he could get no more but *ipsa corpora*, and no part of the stock; and much less can a stipendiary claim more: for, by the canon law, *decimæ debentur parochis*; but no part of the stock:—See 24th June, 1662, *Vernor* against *Allan*, and 3d December 1664, *Hutchison* against the *Earl of Cassils*. And it is not to be presumed of any heritor in his right wits, that he will cast four parts of his lands waste to disappoint the minister of his teind.

The Lords, by plurality, found the minister in this circumstantiate case was not to be restricted precisely to the teind of this roun, but might affect the whole for his stipend, in so far as it extends; though sundry of the Lords thought this an extraordinary privilege, and not to be granted, unless he had affected it by arrestment, or other legal diligence; which method would be more agreeable to the analogy of our law.

*Vol. II. Page 567.*

---

1710. February 23. WEIR of NEWTOUN against HAMILTON of GILKERSCLEUGH.

THE deceased John Hamilton of Gilkerscleugh, having conceived a prejudice against Newtoun, on account of a process against him; he went, in 1682, to Major White, the Laird of Meldrum, and others commissioned by the Privy Council, to search out those who had been at the Bothwell-bridge rebellion, or had resetted or harboured them; and delated Newtoun as accessory, in having furnished horses to some of those rebels, and dealing with him by many arguments to join them, threatening he would be ruined if he did not; and that he did not retire till he heard the Duke of Monmouth was marching against them: and that he harboured those ministers in his house, who privately baptized the children round about, and had several intercommuned rebels on his ground: And, on this malicious information, he got him imprisoned, first in Edinburgh, then in Dunbarton, where he was kept two years and a half close prisoner, and put to vast trouble and expense, besides the loss of his own business, extending to more than L.500 sterling. After the Revolution, Newtoun gives in a bill to the Parliament, in July 1690, representing, That, by Gilkerscleugh's false and malicious information, he was brought in hazard of his life, being accused of treason, and was damnified in his estate to a great sum; and, therefore, craved reparation of his losses: who remitted the affair to the commission of Parliament for fines and forfeitures. And they having called Gilkers-