

ceed to a high censure ; but, the messenger having candidly acknowledged the facts upon which the complaint proceeded, and pleaded ignorance of the Act of Sederunt, and sentence against Ross, 4th November 1738, which had never come to his knowledge, they mitigated their sentence, and ordered repetition of the fees exacted, and found the messenger liable in expenses. To prevent the like in time coming, they ordered a copy of the Act of Sederunt 1738 to be transmitted to the Lyon-Court, and to be recorded in their books ; which, though ordered at the time, it seems had not been done ; and also to every Sheriff. But, in other instances of complaints, upon this Act of Sederunt, where they are groundless, the Lords have dismissed them with expenses. Thus, in a complaint on the Act of Sederunt 1738, *William Shaw, bookseller*, against *James Watson, junior, messenger*, the Lords, 27th February 1778, dismissed the complaint, and found the messenger entitled to expenses.

They did the same, 23d June 1778, *Alexander Christie, vintner in Dumfermline*, against said *Mr Watson*.

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1778. July 29.      MACDONALD *against* MACISAAC.

ALEXANDER Macdonald, writer to the signet, having employed MacIsaac, messenger at Campbelltown, to execute a caption against a gentleman in that neighbourhood, the messenger delayed ; and, though he owned receipt of the caption, did not own receipt of Mr Macdonald's letters, ordering him to put it into execution. On a summary complaint, at Mr Macdonald's instance, to have him censured and made liable for the debt, the Lords ordered the complaint to be served, and the messenger to answer against November. Lord Covington and Lord Westhall demurred as to the competency of this complaint, but the other Lords thought it competent. There have been several similar instances, particularly of one Graham, a messenger at Lochmaben, and several others. See Summary Application.

The EARL of HOME *against* NASMYTH.

NASMYTH, Creditor to the Earl of Home, sent (August 1774,) a procurator, with a notary, messenger, and \_\_\_\_\_, to poind the furniture of Hirsell, for a debt of L.333 due by bond. Captain Elphinston interfered, and prevented a poinding, by giving a draught on his banker at Edinburgh for the money. The procurator insisted for L.36 of expenses, or to poind for the penalty. To prevent this a draught was given for this sum also ; out of which the procurator, notary, messenger, and concurrents were paid. A complaint was given in complaining,—*1mo*, That the account was most exorbitant ; *2do*, That exacting expenses from the debtor was contrary to Act of Sederunt 1738. It was ANSWERED,—That the account was moderate, and was settled without objection. *Secundo*, The notary, and messenger, and concurrents, exacted nothing. It was

the procurator who did all ; they received payment only after they came to town.

It went to an Ordinary.

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## MINISTER'S STIPEND.

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1762. November 16. MR GEORGE BLAIR *against* The INHABITANTS of CLAYHOLE.

WHERE a minister's stipend is modified ; though he may lose part of it by the negative prescription, he can acquire nothing beyond it by the positive. It is like a bounding charter. In the case of the Minister of Stranraer against the Inhabitants of Clayhole, it was contended for the Inhabitants, that, although the ministers of Stranraer had been in the uniform practice of exacting a tithe out of all the herrings taken by the inhabitants of Clayhole, and landed there, yet that such a practice would not be sufficient to subject the inhabitants to the same, contrary to their wills, in time coming ; because this would be constituting a right by prescription, contrary to the decret of modification, by which the minister stands limited to the vicarage tithes of *the Town of Stranraer* ; which could not be extended to the tithes of Clayhole, which lay in a different parish. But it was ANSWERED,—That, by the charter of erection, the port of Stranraer was erected with the burrow, and comprehended all Lochryan, and therefore comprehended Clayhole ; and, of consequence, all herrings landed at Clayhole were liable in teind. And there were many instances in Scotland where part of the tithes of one parish were payable to the minister of another. “ The Lords, 16th November 1762, found, that the Minister of Stranraer had right to uplift the tithe of herring landed within the port of Stranraer and village of Clayhole.” They refused a petition without answers, and adhered.

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MINOR. See TUTOR and CURATORS.

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