

1661. July 26.

No 410.

WILLIAM KER *against* Mr ROBERT STEEDMAN, Minister at Carridden.

IN this process it was found, that a stipend of a suspended minister did not vaque, the suspension being only interpreted to be *ab officio, non beneficio*; as also, found, that an act of the Presbytery, subscribed by the whole Presbytery, bearing, that William Ker's father, then minister at Carridden, did consent thereto, could not prove his consent, unless he had subscribed the same.

Fal. Dic. v. 2. p. 248. Gilmour, No 4. p. 4.

* * * Stair's report of this case is No 2. p. 461, *voce* ANNAT.

1661. July 24.

LAIRD of BUCHANAN *against* OSBURN.

No 411.

Consent of parties to a decree judicially, not sufficiently instructed by the decree, there being a minute by which it appeared, that this consent was not minuted till half a year after it was granted.

THE Laird of Buchanan pursues reduction of a decret, obtained against him at the instance of Lieutenant-Colonel Osburn *in anno* 1653, upon many reasons, mainly, because the ground of the decret was only a bill not past the signet, at the instance of umquhile Mr William Cuninghame, continued in Osburn after his decease without transferring, for rectifying or rescinding a minute of disposition of the lands of Ballindalloch by Mr William to Buchanan, put in the hands of Mr David Buchanan, who gave his ticket that the same should be kept until it were perfected according to equity and justice; and deponed, that the point to be rectified was only the warrandice which in the minute was absolute; upon which bills the then judges ordained the parties to submit, who accordingly submitted to four friends and two oversmen, who were to report 10th February 1653, which oversmen did unwarrantably report after the expiring of the said reference, upon the 19th of February, to Buchanan's great prejudice, contrary to justice, in so far as they ordained him to pay Osburn sixteen years' purchase for the price of the lands, without production or debating of the parties' rights, or calling or hearing the arbiters, and with warrandice from Osburn and his goodfather's fact and deed only, albeit the lands were insecure, holden ward, and lying in the highlands; and found the rental of the lands to be 5000 merks yearly, without distinguishing between stock and teind, though the testimony of the witnesses proves not above 3000 merks, beside the teind; of which lands Osburn nor his goodfather had neither title nor possession of Buchanbeg, Buchanmore, and Ballachroon, which are parts of Ballindalloch, whereunto the judges did most unjustly interpone their authority, superseding 20,000 merks until the right of Buchanbeg, Buchanmore, and Ballachroon, were discussed; and whereas the decret bears Buchanan to have consented, he denied the same; neither was there any minute of process taken upon the day of his alleged consent, but by an ordinance of the judges half a year thereafter, made