

1666. February 10.

The COLLECTOR of the VACANT STIPENDS, *against* PARISHIONERS of MAYBOLL and GIRVANE.

THE Collector of the vacant stipend, having charged the heritors of Mayboll and Girvane, for the stipend due by them the year 1663; they suspend, and produce the minister's discharges who served these years, and alleged they made payment *bona fide* before this charge.—It was *answered*, They were in *mala fide* by the act of the last session of Parliament, declaring the places of ministers, entered since 1649, to be vacant, if they had not obtained presentation and collation conform to the act.—It was *answered*, That the fore-said act was not simple, but conditional, if they had not obtained presentation and collation; and there was nothing obliging the parishioners to inquire, whether they had done that, which, by the law, they were obliged to do; but seeing there was no charge against them by the collector of the vacant stipends, and that the patron, or ordinary, did not present another, but suffered the then incumbents to preach all that year, they were in *bona fide*, to think that they might pay them for the time they served.—It was *answered*, There was a decret produced against the same ministers, for the year 1662, and therefore they could have no right to the year 1663.

THE LORDS found the reason of suspension relevant and proven, notwithstanding of the answer; because the decret was not against the heritors, and was but obtained in 1664, after they had made payment of the year 1663.

*Fol. Dic. v. 1. p. 112. Stair, v. 1. p. 353.*

1676. July 25.

JAMES THOMSON *against* JOHN MOUBRAY.

ALEXANDER FRANK being heritor of several tenements of land in Edinburgh, which were at first comprised by James Porteous, who, long thereafter, got a wadset of the said lands, for the sum of 2100 merks, and for his relief of a cautionry of 1000 merks for the said Frank: The said Alexander Frank did thereafter obtain a decret against Porteous, his heir, finding, after count and reckoning, that he was satisfied; but James Thomson having gotten a gift of bastardy, and *ultimus hæres*, of the said James Porteous, the compriser and wadsetter, and declarator thereupon, did obtain a decret of removing before the Bailies of Edinburgh, against John Moubray, as tenant and possessor of one of the tenements; who having given in a bill of suspension of the said decret, it was ordained by the Lords, that both parties should be heard upon the said bill; the reason of suspension was, that the donatar could be in no better case than Porteous himself, whose right was only a comprising and wadset; both which were satisfied and extinguished by a decret of count and reckoning against

No 23.

Payment to ministers who had fallen from their right, not having obtained presentation and collation, was sustained, because, notwithstanding, they were allowed to preach, and the heritors were not interpellated by the collector of the vacant stipend.

No 24.

Found in conformity with No 16. p. 1786.