

sengers at arms, and is only executed by a Sheriff in that part. It was *answered*, That it was sufficient, seeing the letters bore messengers, Sheriffs in that part.

No 7.

THE LORDS found the inhibition sufficient to interrupt the tacit relocation.

*Stair, v. 1. p. 344.*

1666. February.

Duke of HAMILTON *against* Laird of STRICHEN.

No 8.

DUKE HAMILTON charges the Laird of Strichen as heir to his father, who was Sheriff of Inverness, for payment of some terms taxation resting before 1638, who suspends upon this reason, That by the act of Parliament 1663, the Sheriffs are only obliged to bring in the taxation, being charged under the pain of Rebellion only, and without any certification that they are to be liable thereto themselves, unless they did uplift the same. And it were very hard to make an annual Sheriff, such as Strichen was, to be otherwise liable, and though he had been, yet no diligence having been done against him in his own time, his heir after his death, and after so long a time, ought not to be liable for his fault, unless he had been *lucratus* by it; and the suspender, of his own consent, is content to be countable for what his father intromitted with, and what he did not intromit with is *debitum fundi*, and may be recovered yet.

THE LORDS found the reason of suspension relevant.

*Gilmour, No 183. p. 133.*

1666. February 6.

ARCHBISHOP of GLASGOW *against* Mr JAMES LOGAN.

No 9.

THE Archbishop of Glasgow pursues a declarator against Mr James Logan, for declaring he had lost his place as Commissary-clerk of Dumfries, because he had deserted his place and gone out of the country; and because he was a person insolvent and denounced rebel, and had lifted a considerable sum for the quots of testaments which he had taken with him and not paid. It was *answered*, That the defender had his gift from the former Archbishop with a power of deputation, and that his place is, and hath always been served by a depute; and therefore, neither his absence nor his being denounced for debt, can annul his gift or hinder him to serve by his depute. It was *answered*, That the principal clerk not having *personam standi in judicio*, his depute cannot sit for him who could not sit himself, and that he being absent out of the country for a considerable space, must be esteemed to have relinquished his place.

The office of commissary-clerk not annulled by his absence for a time from the country.

THE LORDS found the defence relevant upon the power of deputation, which they found not to be annulled by his absence or denunciation *sine crimine*.

*Fol. Dic. v. 2. p. 292. Stair, v. 1. p. 347.*