

1668. February 21.

SIR LAURENCE SCOT of Clerkington, *against* The LADY CLERKINGTON.

Sir Laurence Scot of Clerkington having obtained himself to be executor surrogated *ad omnia et male appreciata* of his father's testament, and having obtained licence to pursue, pursues the Lady Clerkington as principal executrix, who alleged no process upon the licence, because licences are only competent to executors principal, before there be any confirmation, after which the Commissaries neither use, nor may give licence *ad omnia*, as was found the 14th of December, 1621, Halliday against ———, No. 59. p. 3871. observed by Durie. The pursuer answered, that there was more reason to sustain licences after the principal confirmation, when the best of the inventory was given up, and what remained was uncertain, and for the practise the Lords had since allowed licences after confirmation.

The Lords repelled the defence, and sustained the process upon the licence.

*Stair, v. 1. p. 529.*

No. 33.

Title to pursue upon a licence, sustained after confirmation of the principal testament, and before confirmation of datives *ad omnia*.

1675. November 9.

FLEMING *against* The TOWN of CUPAR in FIFE.

M'Duff Earl of Fife having mortified an annuity of £.22 13s. 4d. out of his mills of Cupar to the Abbacy of Culross, the same was confirmed by King Alexander the Second; and after the suppression of monasteries, King Charles the First erected the Monastery of Culross into a temporal lordship to the Lord Colvil, and disposed the whole rights of the Monastery to him, with the burden of the Minister of Culross's stipends, by his charter *in anno* 1609, in which this annuity out of the mills of Cupar is expressed, but it is designed to be £.17. Mr. Matthew Fleming, as having been Minister of Culross, and having right from the executors of a prior Minister, pursues the Town of Cupar, who now have right to the mills, for this annuity, who alleged, *1mo*, No process, because there is no sufficient title produced, there being nothing produced to instruct that the Earl of Fife was heritor of the mills of Cupar, or that he mortified this annuity, but only a transumpt by instrument of a notary, of certain charters granted to the Abbacy, and among the rest, of a charter by the Earl of Fife, mortifying £.22 13s. 4d. to the Abbacy of Culross, and of a charter of King Alexander's, confirming the same, but without citation of parties, or authority of any Judge, and therefore such instruments cannot prove, or be any title to declare or decern such a perpetual burden out of lands; *2do*, Albeit there were a title, the right is extinct by prescription. The pursuer answered, That he had produced sufficient instruction of his title, viz. "A most famous and authentic Register of the Abbacy, kept in

No. 34.

Title in matters of church benefices.