

No 295. 1610. February 1. BISHOP OF DUMBLANE *against* HIS COMMISSARY.

COMMISSARY not compelled to make continual residence in the principal town of the diocess; but if his clerk remain ordinarily there, and himself resort thither two days in the week; and after, if the service and affairs of the lieges require it, is found sufficient.

*Fol. Dic. v. 1. p. 506. Haddington, MS. No 1772.*

1672. July 11. FLEMING *against* NIMMO.

No 296.

The commissary clerk must give personal attendance, unless necessarily absent.

THE Commissary of Glasgow pursues the clerk of the commissariot, for declaring that he ought to reside and exerce the office in his own person, and that for non-residence or malversation he ought to be deposed. The defender *alleged* absolvitor, because his office depends not upon the Commissary, but he hath it immediately by gift from the Archbishop; *2do*, In his gift he hath a power of deputation, and hath a sufficient depute who exerceth the place; and albeit the Bishop might pursue him to be deposed, the Commissary hath no interest. The pursuer *answered*, That he hath good interest by his office to remove an insufficient or malversant clerk, not only upon the account of justice, which he ought faithfully and speedily to dispatch, but also upon his own interest, to whom the profits of the place belongs; neither doth the power of deputation exempt him from attendance, but only in cases when he hath need to be absent, but not to be absent at his pleasure, or to enjoy the benefits without any care of the office.

THE LORDS sustained the declarator, and found the clerk obliged to attend, unless he were absent upon just and necessary occasions.

*Fol. Dic. v. 1. p. 506. Stair, v. 2. p. 99.*

1738. November 28.

MAGISTRATES OF LANARK *against* THE COMMISSARY OF LANARK.

No 297.

A Commissary was found obliged to hold his courts in a particular town, unless upon extraordinary emergencies.

THE Commissary of Lanark having established a depute at Lesmahagow, for the convenience of the district adjacent to that village, of which the Town of Lanark complained by suspension, it was found by a small plurality, 'That he could not establish such depute, and that he is obliged to hold his courts in 'the town of Lanark, and there only.'

A quality at the same time was added, which there was no dispute about, viz. Without prejudice to his sealing and opening the repositories of persons deceased, granting summary warrants, and other acts of administration, and with-