

comparing to depone, nor producing the discharges, the term was circumduced, and the letters found orderly proceeded.

For the weakness of homologations, *vide supra*, November, 1676, No. 508, § 4. See Craig, p. 305. *Advocates' MS. No. 581, folio 289.*

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1677. *June 26.* The CREDITORS of PATRICK INGLIS of Eastbarnes *against* JOHN INGLIS of Cramond.

THERE was a large debate between the creditors of Mr Patrick Inglis of Eastbarnes and Mr John Inglis of Cramond, who had an infestment of annualrent furth of these lands, yet the other creditors were preferred to him; the case must be inquired after. *Vide supra*, A large debate of the creditors and Mr Patrick against his mother in December 1671; it is No. 282.

*Advocates' MS. No. 583, folio 289.*

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1677. *June.* The EARL of LOUTHIAN *against* the MASTER of BALMERINOC and JOHN ELPHINSTON.

THE Earl of Louthian raised a reduction and declarator against the Master of Balmerinoch and John Elphinston, to hear and see it found and declared, that a bond, wherein the said John Elphinston's name was, for the master's behoof, was truly blank in the creditor's name and sum, and left by the pursuer's father in the hands of Sir Thomas Nicolson of Carnock, advocate; and upon his decease was found amongst his papers by James Chalmers, then his servant, afterwards advocate, and taken out and delivered to the master, and filled up without any onerous cause; and therefore to be decerned to give it up. This was a reflecting conveyance if true, and like the case the town of Hamilton have with Robert Hendersone, for filling up in a blank bond 3000 merks instead of 500 merks. See the Information, *apud me.* Their blanks are dangerous. *Advocates' MS. No. 584, folio 289.*

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1677. *June.* ANENT *INDEBITI SOLUTIO.*

WHERE one pursued for repetition of money *indebite solutum, condictione indebiti*, it fell to be questioned whether the annualrents of the sum paid could be condicted, since they were *fructus et accessio principalis sortis*, and so should follow it. On the other hand, they were not paid, and so could not be repeated; their mother only was paid, and they are *fructus bona fide consumpti*. And thus Cujace, in his Paratitle *ad Tit. C. de privilegio fisci*, tells, where a privileged creditor retracts the payment the debtor by gratification had made to another less privileged creditor, *condictione indebiti*, he recovers it, but *sine usuris*. Yet our Lords, on the 5th

of July, 1677, found the intermediate annuals ought to be restored as well as the principal; only that they were due *ut damnum et interesse*. For the case of *condictio indebiti*, see at great length, *supra*, in February, 1673, Ramsay and Robertsons, No. 385.

*In lege 15, D. de Condictione indebiti, etiam accessiones veniunt.*

*Advocates' MS. No. 585, folio 290.*

1676 and 1677. The MINISTER of NIG *against* his PARISHIONERS.

1676. December 13.—MR RICHARD MAITLAND, minister at Nig, pursues Sir Jo. Forbes of Monymusk, Meinzieis of Pitfoddells, &c. his parishioners, before the commission for kirks, for an augmentation of his stipend, the length of the act of Parliament. They say, the Bishop of Aberdeen had ordered all the ministers in his diocess whose stipends were under eight chalders of victual to pursue to get them made up. Among sundry defences, which see in the Information, this was one, That Monymusk's teinds could not be affected or burdened with any augmentation, because he had bought his teinds, and obtained them, on the resignation of the Marquis of Hamilton, (who was lord of erection of the abbacy of Arbroath, to which thir teinds belonged,) in 1618, heritably and irredeemably disposed to him, *cum decimis inclusis*; and therefore, having so onerously acquired them, they could not be clogged or destined so long as there was other free teinds unbought, and not in so favourable a case, in the parish. *2do*, They could not be affected at all, because we offered to prove that the lands of Monymusk, stock and teind, were an ecclesiastical feu of the said abbacy of Aberbrothick; (to which religious house they were vowed by King David, that sair saint to the Crown, when he went against Donald of the Isles, if he should return prosperous;) who being monks of the Cistercian order, their teinds, both by the canon law, cap. 10 and 34, *extra, de decimis*, and our law, (see Haddington's Index of Practicks, *verbo* Teinds, No. 17; see Stair's System, *Tit. Of Teinds*, §; see Craig, *Feudorum*, p. 101, *in margine*; see Mornacii *Observationes ad L. 16, D. de Legibus*, p. 22,) are declared free of all burden. If that cloister were *Cistercians*, I cannot tell; some say, in their foundation they are so called; but in the list I have of all the monasteries in Scotland, they are called *Turonenses* or *Tironenses, quasi Tirones novitii*; see *Rosse's View of all Religions*. But if there be no other teinds, it were hard on this to defraud the church of that which is naturally their patrimony, as the teinds are called, act 10, Parliament 1567; but if there be any other teinds, they should be free and exemed.

I find now Arbroath was a convent of Benedictine monks, from the charters of Torric; see a Compend of them. They are called *Turonenses* from the Benedictine Abbey of Marmoustier at Tours, which I saw.

*Advocates' MS. No. 523, folio 270.*

1677. June.—IN the action pursued before the Commission for Plantation of Kirks, mentioned *supra*, December 13, 1676, No. 523, at the instance of Mr Richard Maitland, minister of Nig, against Monymusk and others, for an augmentation of his stipend; I ALLEGED, It was none of the best characters of a minister to endanger Christian charity, and the breach of that spiritual union between him