

being cited before the admiral, Martine was decerned for not finding caution *judicio sisti*, and was fugitive ; and, being apprehended at London by Van Portan, he did acknowledge the piracy, and enumerated the goods, amongst which these in question were contained : he being voluntarily dismissed by Van Portan, upon that confession.

*Vol. II, Page 750.*

1680. *February 6.*

NAPIERS, Supplicants.

NAPIER of Wrights-houses having died without issue, two women of his name, of a far relation, gave in supplications, bearing,—That either party might take out brieves out of the Chancellery for serving themselves heirs to the defunct, which might be directed to any judge ordinary in Scotland, which cannot otherwise be known to the supplicant ; whereby an ignorant inquest may serve ; which will put them to the difficulty and necessity of reduction ; and therefore desiring that the Lords would prohibit brieves to be issued or served, till they were cited to the service.

The Lords gave an injunction to the director to the Chancellery, ordering that he should give out brieves to neither party, till that party demanding the brief return an instrument of the intimation to the Chancellery ; bearing intimation of the brief demanded, and of the judge to whom directed, and of the day in which she is to be served : that thereby the other parties might attend, and might be heard for their interests.

*Vol. II, Page 754.*

1680. *February 18.* The EARL of MARR *against* His VASSALS.

THE Earl of Marr having pursued reduction of a feu, upon a clause therein,—“That upon two terms running in the third it should be null ;” and for instructing thereof, produced the vassal’s retour :

The Lords suffered the vassal to purge by payment at the bar ; seeing the retour bears a feu-duty, *si petatur*, in the first part of the retour bearing the defunct’s right ; though these words were not repeated in the posterior clause of the retour or precept, declaring the feu-duty, and expressing the clause irritant.

*Vol. II, Page 759.*

1680. *February 25.* SIR JOHN SCOT *against* The ARCHBISHOP of GLASGOW.

SIR John Scot, having right from the Earl of Lothian, who had the gift of patronage of the church of Ancrum from the King, *in anno 1625* ; did thereupon present ; and having obtained horning of course, did charge the Archbishop to try and admit. He gave in a bill of suspension ; whereupon the cause was ordained to be discussed ; and insisted upon this reason,—that he was not obliged

to accept Ancrum's presentation, because he had a better right to the patronage; in so far as King James, by his charter, *in anno* 1608, to the then Archbishop of Glasgow, upon the bishop's resignation, disposed the bishopric with all benefices thereto belonging, with a *novo-damus*, enumerating the patronage of Ancrum as one of the benefices belonging thereto, *cum omni alio jure* the King had to the bishopric or benefice foresaid; whereby the Archbishop had right before Ancrum or his author.

It was ANSWERED for Ancrum, That he had obtained a decret *in foro* against Archbishop Lightoun, declaring his right to this patronage; in which decret the King's gift, now produced, was founded on; and yet the decret bears,—“That the Lords having considered the rights produced, declared Ancrum's right.”

The Archbishop REPLIED, That bishops cannot dilapidate their benefices directly nor indirectly, by omitting lawful defences; and therefore *competent and omitted* is not relevant against their successors, they being but liferenters. *2do*. It cannot be questioned but collusion, in suffering decreets to pass, is a dilapidation; but this decret is evidently collusive, bearing, That the Archbishop produced the King's gift, 1608, containing the patronage of Ancrum; and yet no mention of any defence founded thereon, which was obvious, the Bishop's right being anterior to Ancrum's: And though the decret bears,—That the Lords did consider the rights; yet that could be only in relation to the allegiances of parties; but all the allegiance in this decret is this dilator only,—No process till the dean and chapter be called.

It was REPLIED, That if decreets *in foro*, against beneficed persons, cannot operate against their successors, they shall have greater privileges than the King; and no process for or against them, can be finally ended. And as to the collusion, it does not appear from the decret; seeing the bishop's right was produced, and under the Lords' consideration. And the great mean of termination of pleas is, that, after compearance, nothing then *competent and omitted* can quarrel the decret, even though there be no defence proponed, but the libel denied; much more where a dilator is proponed; seeing now it is declared by act of sederunt,—That parties cannot pass from their compearance, after dilators proponed and discussed, though sometimes they might.

The Lords found, That collusion did appear from this decret; the bishop's right having been produced, and anterior, and an obvious defence thereupon, without any mention of the said defence: but delayed the interlocutor till the 29th of February.

*Vol. II, Page 764.*

---

1680. *June 11.* GORDON of DAVIDSTOUN and ISOBEL ROBERTSON *against* WILLIAM MENZIES.

GORDON of Davidstoun and Isobel Robertson pursue the Laird of Weym, and William Menzies his tenant, for a spuilvie of five horses and the said Isobel's whole household-plenishing. The defenders being absent, the libel was admitted to the pursuer's probation: who proved, that, in the night-time, some