

their gifts in general, with all emoluments ; which are ever sustained as the emoluments are proven to be accustomed ; and the Act of Parliament anent the Lyon is not exclusive or prejudicial to the trumpeters more than to other offices.

The Lords found, That, if the payments made by the bishops were not ordinary and uniform, as a fixed due of 100 merks, they were not liable ; but, if it was a constant fixed duty, paid by all the bishops at their entry, and not by some more and some less, they sustained the libel, if it were so condescended, and allowed the pursuers warrant and diligence to adduce all evidents and adminicles thereanent.

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1681. *June 23.* CRAWFORD of ARDMILLAN *against* The LORD BARGENY.

CRAWFORD of Ardmillan, having charged the Lord Bargeny for payment of a sum contained in his bond ;—he suspended, and ALLEGED Compensation, and payment of a part.

Which being found relevant, and a term assigned ; at the calling of the act to circumduce the term, Bargeny produceth some writs ; and Ardmillan, by supplication, ALLEGED, That they had no contingency with the reasons, but were produced of purpose that the cause might go to the roll of concluded causes ; which would make a long delay ere it came in of course ; and, if any thing proper were produced, the desire of this decret would be for the superplus. Which being remitted to the Ordinary, he reported, That there was nothing had contingency but a compensation of 32 merks. Whereupon the question arose, Whether the charger, allowing that, should have decret for the rest, without abiding the roll.

The Lords found, That, when acts were called for circumducing the term, when any thing was produced, the Ordinary, before he made a great avizandum whereby the cause was concluded, ought to allow the other party a sight of the production ; and, if the other party was content to allow the same, and that there was a clear superplus, the Ordinary ought to discern for the superplus, if the party required the same ; and, if the party would not allow the partial production, make avizandum thereupon only ; but if the party suffered avizandum to be made *simpliciter* in the cause, the Lords would not consider the cause before it came in course : otherwise they would be necessitated to advise causes twice ; *first*, whether the writs were contingents ; and *next*, whether the writs proved : which were most inconvenient, and contrary to custom.

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1681. *July 14.* JAMES BARTHOLOMEW *against* MARGARET BARTHOLOMEW.

MARGARET Bartholomew having served an edict for choosing of curators before the Sheriff of Renfrew, James Bartholomew, her father, pursues advocacy thereof on this reason, That he, as father and lawful administrator, is the only