

the years of the said tack were expired ; and *medio tempore* craved a sequestration of the maills and duties of the lands.

The Lords called for Sir William, and having looked to the tack, and finding it was set aye and while the Duke's debts wherein Sir William stood cautioner, were paid ; they gave it back, without allowing Tweeddale a sight of it ; and found, Sir William not being now a member of the Session, he could not be summarily convened *hoc ordine* ; and refused to sequestrate the rents.

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1685. The BISHOP of EDINBURGH *against* WILLIAM HAY, Commissary-Clerk.

*January 9.*—THE Bishop of Edinburgh pursues William Hay, commissary-clerk, for deprivation, on sundry gross malversations. This process being reported by Pitmedden, it was cast on this dilator, that there were but five free days in the second citation ; though the Bishop alleged 24 hours, by our custom, was sufficient for the second citation within the town of Edinburgh, where the defender dwelt.

Some of the points he complained of in the clerk were, that, contrary to the instructions given to the Commissaries and their clerks, he had not yearly brought in the registers of the Court to be marked by the Bishop. *2do*, That he had recorded sundry testaments as suffering a bipartite or tripartite division, and by which books he had counted to the Bishop for his quote : whereas the principal confirmed testaments given out by him bore no division at all, whereby the Bishop was cheated and defrauded of a part of his casualty of quote. *3tio*, He had extracted and given out an eik to a testament, as dated in 1666, with a cautioner not then six years old ; whereas it was done within these two years. He pretended the Commissaries authorised him to do it. But they denied it ; *et in criminibus claris mandatum superioris non excusat.*

There is no clerk, if strictly tried, but may be found to have incurred escapes deserving deprivation ; and the Marishall de Monluck's observe as to all ministers of justice, that, without a yearly remission, they may merit capital punishment, is recorded by Pet. Ærodius, *Rer. Judicatar. lib. 9, tit. 7.*

The Bishop's design was, if he could not force him to give a new composition, then to see if he could remove him, and to put his brother, Mr Robert Paterson, in the place. *Vide* more of this, 18th February 1685.

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*February 18.*—THE Bishop of Edinburgh *against* William Hay, commissary-clerk, mentioned 9th January 1685. The Lords having heard his malversations, with the answers made thereto ; and particularly, that all committed before the transaction between the Bishop and him, whereby he gave him 4000 merks, must be presumed remitted ; (though it may be alleged, the Bishop knew them not at that time, and so was *non cogitatum* ; ) they ordained, before answer, the Bishop to prove his condescendence, and the clerk to prove his alleviations.

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