

1701. *December 18.* MR. GEORGE TURNBUL *against* The HERITORS and KIRK-SESSION of DALMENIE.

MR. GEORGE TURNBUL pursues the heritors of Dalmenie for a year's stipend, from Whitsunday 1689 to Whitsunday 1690, libelling, that he had right thereto, as having preached and exercised the rest of his ministerial function in the said parish, at the desire of the people; the kirk being then vacant, by the decease of the former episcopal incumbent.

Compearance was made for the Kirk-Session, who craved to be preferred; because by the 2d Act in Parliament 1690, Presbyterian Ministers who were thrust from their churches since January 1661, were restored, and allowed access to their churches forthwith; and also, they were thereby provided to the benefices and stipends for the whole year 1689, where the churches were vacant; and where they were not vacant, their entry was declared to be to the half of the said preceding benefice: and Mr. Alexander Hamilton, who was thrust from his church of Dalmenie, being thereby reponed, did mortify the stipend libelled to the poor of the parish, who craved to be preferred in his right.

It was ANSWERED,—*1mo*, The pursuer is as expressly founded in the 5th Act of the same session of Parliament, declaring all churches deserted; or where the conformed ministers were deprived or dead, being supplied by Presbyterian ministers, by the desire or consent of the parish, the said ministers should have right according to their entry in the year 1689. *2do*, Mr. Alexander Hamilton had never returned, or owned his right to the parish of Dalmenie, but preached in Edinburgh during the said space, and had his stipend there.

It was REPLIED,—Mr. Hamilton was reponed by the 2d Act, Parl. 1690, whereby he had forthwith free access to his church; so that the posterior act in favours of the pursuer, as exercising his ministry in that parish, could take no place, because the parish of Dalmenie was not then vacant. *2do*, *Esto* Mr. Hamilton being infirm, did not return to exercise his ministry in that parish, he was only accountable to the church, but cannot be called in question by the pursuer. *3tio*, Mr. Hamilton did not enjoy any benefice by a legal constitution in Edinburgh, but what he received was by a free and voluntary contribution.

The Lords found, That Mr. Hamilton never having returned to Dalmenie, but having preached in Edinburgh, and received a stipend there, though by contribution, Mr. Turnbull was preferable, he proving that he preached and exercised other parts of the ministerial function in Dalmenie during the space libelled.

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1701. *December 25.* JOHN INGLIS *against* INGLIS.

JOHN INGLIS being, upon a brief of idiocy, found, by an inquest, to be an idiot many years ago, he now raises a reduction and declarator, calling his nearest relations, and libelling, that he is now, and hath been of several years bygone, become *rei sui satis providus*; and concluding, that he ought to be so declared,