is obvious that was the true cause of the bond; for the discharge of the fine is of the same individual date with the bond, and the same writer and witnesses, so they were the mutual causes the one of the other. As to the *second*, the Act of Parliament is opponed, not only mentioning donatars, but also other intromitters; which will comprehend this defender. To the *third*, A general discharge will not exoner, unless the special account bear this fine among the rest.

The Lords repelled the first two defences, and found the bond was for the fine, and that he was in the case of the Act of Parliament, though he was not a donatar; but as to the third, before answer, ordained Ingliston, the defender, to produce his discharge, or any other evidences he would found on to instruct his payment of this fine to the Exchequer; for, if he had truly counted for it, and paid it in, the Lords thought there was no reason to make him liable to repeat, give it back, or pay it over again.

Vol. II. Page 155.

1702. *July* 23. The MINISTER and HERITORS of ASHKIRK *against* SIR GILBERT ELLIOT of HEADSHAW.

SIR Gilbert Elliot of Headshaw, Advocate, against Mr. Gordon, minister at Ashkirk, and the other heritors.

Sir Gilbert having obtained from K. William the right of patronage of that church, which conveys the right to the tithes over and above the minister's stipend, there is a reduction of the said gift of patronage raised by the minister and some of the heritors, on this reason, That it was contrary to the 126th Act, Parl. 1593, declaring all gifts of patronage null, unless the consent of the beneficed person in possession be had and obtained thereto; which was not pretended in this case. At calling, it was craved, that Sir Gilbert, defender, might take a term in the reduction and improbation to produce the King's gift called for.

ALLEGED,---That I cannot be obliged to produce, neither to you, the minister, nor to the heritors, because ye have no title nor interest to crave the same: 1*mo*, Not the minister, because he is no beneficed person, but only a stipendiary. 2*do*, That Act 1593 is rescinded, and on the matter taken away by the 23d Act 1690 and the 26th Act 1693, where they who were formerly titulars and parsons are now turned to stipendiaries: but the truth is, the minister of Askirk is a mere stipendiary, as appears by his decreet of locality produced. 2*do*, As the minister has no interest to force production, so neither have the Heritors, because they produce no right nor infeftment of the patronage in controversy, as the defender does; neither needs the gifting of patronages any previous dissolution, or subsequent ratification of Parliament, they not being annexed to the Crown, nor any Act impeding his Majesty's interposing of patrons betwixt the heritors and himself,—he coming to be patron by the abolition of Episcopacy, and succeeding in their place: neither does the 2d Act of Parliament 1606 take any room here.

The Lords found the pursuers had no interest; and, therefore, Sir Gilbert was not bound to take a term in the reduction to produce his gift of patronage. The ministers and heritors protested for remedy of law to the Parliament.

Vol. II. Page 156.