

den upon him for his wife that is minor ; against which he can never be reponed, be his lesion never so great, seeing he was *major, sciens et prudens*.

The Lords adhered to their former interlocutor, in finding the rents and annual-rents discharged ; but that they must compensate *pro tanto* the articles of the Cornet's discharge.

*Page 45.*

1705. *December 7.* The PROCURATOR-FISCAL OF ANNANDALE *against* GEORGE CARRUTHERS of Holmains.

THE Procurator-fiscal of Annandale, having pursued George Carruthers for 1000 merks, as the fine imposed by the Act 34. Parl. 1. Charles II. for an irregular marriage ; which act was ordained by the Act 12. Sess. 5. Parl. King William, to be put to execution at the instance of the procurator-fiscal of the jurisdiction where the parties guilty should be questioned : and the said defender (whose estate and residence is in the parish of Daltoun, and stewartry of Annandale,) having procured a discharge from the minister of Daltoun, acknowledging his having given satisfaction to the parish ; and a testificate from the kirk-treasurer of Edinburgh, where the marriage was celebrated, bearing receipt of the poors' dues, and a discharge of the pecuniary mulct, for not marrying at the ordinary time in the church :—

The Lords found the fine should be applied to pious uses within the parish, with the burden of the pursuer's expences, to be modified by the Lords ; and found the minister could not discharge ; and therefore repelled the defence, upon payment made to him.

*Page 50.*

1706. *January 3.* SIR ANDREW KENNEDY of Cloburn, *against* SIR ALEXANDER CUMING of Culter.

SIR ANDREW, thinking his liferent right to be conservator of the Scots privileges in the Netherlands unjustly invaded, by Sir Alexander Cuming's procuring a gift and commission of the office from the Queen ; raised a reduction of the said commission before it past the Seals, and a declarator of his own right and possession. Sir Alexander's gift being afterwards expedite under the Great Seal, he presented it to the States-General, and the town of Camphire, who received him, and recorded his commission.

At the calling of Sir Andrew's summons before the Lords, he first insisted for declaring his possession ; and decerning Sir Alexander to desist from troubling him in the exercise of the office, so long as his commission stood unreduced.