KAIMES. In this cause, the only difficulty was, that union could not be dissolved till infeftment was taken; and, consequently, that though the infeftment dissolved the union, yet that it was good, in terms of the dispensation contained in the union. My answer is, that the personal disposition divests, for that the disponer could not take infeftment upon the lands disponed. But, as to the mill, there is no difficulty, for the King cannot dispense with the accustomed symbols.

AUCHINLECK. The power of the King cannot be doubted; for there is practice and innumerable examples.

PITFOUR. I think, that, if the dispensation as to the union ceases, the dispensation as to symbols ceases also.

GARDENSTON. If you say that the dispensation is still good as to the symbols, why not also good as to discontiguous lands?

COALSTON. Where tenements are discontiguous, and where the contiguous subjects are of separate natures, there must be separate infeftments. The Crown may make discontiguous tenements to be one, or may make one symbol serve for another; but, when once there is a disunion, the liberty of taking one infeftment for many ceases, as does the liberty of using one symbol for another.

PRESIDENT. There is a dispensation both as to infeftment and as to symbols. How can the clause be divided? Here Craig's simile of the sheaf of arrows applies:—As Lord Panmure broke the union, he can derive no benefit from the clause of dispensation.

The Lords sustained the objection, that the symbols of earth and stone were used in the infeftment of the mills.

Act. H. Dundas, &c. *Alt.* A. Lockhart, &c.

1768. *February* 6. MR DAVID DICKSON *against* THOMAS, EARL of DUNDONALD, and OTHERS.

PROOF.

An extract of the sentence of a Presbytery deposing a minister, *found* not to be legal evidence of the fact; the minutes from which the extract was taken not having been signed by the moderator.

[*Faculty Collection*, 128; *Dictionary*, 7464.]

HAILES. Here are two questions:—1*st*, Whether there is evidence of the deprivation? 2*d*, Whether, if there is such evidence, the Court can refuse to give it effect, by sustaining the charge for stipend. As to the *first*, We have here a formal extract of a most informal sentence. The minutes from which the extract is framed are confused, detached, blotted scraps. The sentence is at this day unsigned. It was no reason for not signing it, that the moderator

did not approve of the sentence. His signing would not have implied his approbation of the sentence; but only that such a sentence was pronounced. The presiding member of a court must not decline the signing of a judgment, because the judgment is not agreeable to his own opinion. If the moderator had scruples, and if his brethren meant to indulge him in them, they ought to have appointed a moderator *pro re nata* to sign the sentence. Instead of this, they suffer it to remain unsigned, and to appear so in judgment. The law requires all judges to sign their judgments. Neither the law nor the practice of the church allows the sentence of ecclesiastical judges to remain unsigned. As to the *second* question, I think we cannot determine it, because *here* there is no sentence. Had there been a sentence, the civil court could not have entered into the inquiry whether it was just or unjust. The charger founds upon the Act 1584;—but that plea is erroneous, in two different ways. 1*st*, The Act 1584 was a temporary Act, and was repealed by the Act 1592. 2*d*, The Act 1584 mentions certain causes of deprivation, which infer loss of stipend; but it does not limit the causes of deprivation which infer loss of stipend. Thus no mention is made of *lenocinium* in that Act, and yet a minister might certainly be deprived of his office for *lenocinium*. Drinking treasonable healths has been the cause of more than one deprivation; and yet the Act 1584 mentions nothing of that kind. The standing law is not the Act 1584, but the Act 1592, which gives a greater latitude to the ecclesiastical courts, and allows *every effect* to sentences of deprivation according to the primitive discipline of the church. And it cannot be disputed that *brawlers* are among those who are said, in the evangelical institutions, to be unworthy of the episcopal office. So that, if the sentence of the Presbytery were regular, I should not hesitate to find that the civil court must hold it to be valid to every effect whatever. But as the sentence seems null, for the reasons already given, I am for finding the letters orderly proceeded.

AUCHINLECK. The question is, whether is Mr Dickson regularly deposed or not? The suspenders say that he is deposed. And they produce an extract of the sentence. An extract from a competent judicature is probative: but still, when that extract is challenged, we must look at the principal. The principal is not signed. There is no sentence. The minutes are interlined; have marginal notes, and detached pieces of paper pinned to them. For aught that we know to the contrary, the Presbytery may have recalled their sentence by some detached writing, which does not now appear. It is a disgrace for any court to produce such absurd proceedings.

PITFOUR. A minister deposed has no right to stipend, and the civil court cannot interfere. But still there must be a sentence. If the moderator did not choose to sign, some one else ought to have been named to sign for him.

COALSTON. Here the objection is, 1*st*, That the warrants were not signed. I should have had some scruple upon this head, for the Act 1686 has not been understood to relate to ecclesiastical courts. The other objection is, That the warrants are not probative. We cannot review the sentence of an ecclesiastical court: but, *here*, there is no sentence.

KENNET. Were Mr Dickson *de facto* deposed, the General Assembly alone could take cognisance of the merits of the sentence of deposition. What-

ever may be the practice as to signing *ex intervallo*, here there are no regular warrants at all.

PRESIDENT. We have nothing to do either with the deposition or with the settling of another minister; but here we have no evidence of deposition at all.

On the 6th February 1768, the Lords found the letters orderly proceeded, in regard that no evidence of the deposition was produced.

Act. A. Elphinstone. *Alt.* A. Wight. *Rep.* Stonefield.

1768. *February* 17. GEORGE SKENE of Skene, JOHN ERSKINE, Younger of Dun, and OTHERS, *against* DAVID WALLACE and OTHERS.

MEMBER OF PARLIAMENT.

Interrogatories competent to be put to Freeholders against whom complaints are depending.

[*Dictionary*, 8758.]

AUCHINLECK. I am not fond of multiplying oaths, but we must determine cases of this kind, when oaths are demanded. This *oath of trust and possession* cannot be called an oath of calumny. In many particulars it is an oath of verity, not credulity. It is also, in some particulars, an oath *in jure*. The oath may be put as often as the freeholders choose, which is inconsistent with an oath of verity. If a man swears not resting owing, I suppose that he means, not that the sum was never due, but that he has compensation to plead in such case. When he deposes in general, he may be brought to answer special questions, in order to explain his general averment; for, if he meant not resting owing by reason of compensation, it is extrinsic, being *in jure*. So it was determined, in *February* 1751, upon report of Lord Woodhall, probationer. *Here* the petitioners are still better entitled to put the special questions; for the oath of trust and possession is not a reference in the proper sense of the word. Although there may be no back-bond granted, yet there may be an understanding between the parties that is equivalent in law.

MONBODDO. With respect to the common law, there is no great difficulty in allowing re-examinations, when a man swears either in general or ambiguously. The decisions to the contrary are put upon this,—that the party seeking to re-examine had it in his power at the former examination to have put the questions more particularly, and neglected it. A witness, indeed, who once answers, cannot be bound to answer the same questions over again. But the questions now proposed are not precisely the same with those sworn to in the trust-oath. If there were any doubt at common law, it is removed by the statute. The oath 7th Geo. II., is an oath of investigation, and does not exclude any further proof. That oath must be put precisely in the words of the statute. The freeholders