

1627. July 12.

BISHOP GALLOWAY *against* INGLIS.

No 4.

Commissaries had no power to name their clerks and procurators-fiscal, but only the Bishop within his own diocese.

IN an action betwixt the B. of Galloway and Thomas Inglis, to hear him be decerned to desist from the office of procurator-fiscal to the Commissary of Kirkcudbright; the defender defending himself with a right of that office, gifted to him by the Commissary, and that the Commissary had power and right to confer the same to him, the Commissary's gift containing power granted to him to admit procurators and other members of court; the LORDS found that the Commissary, by virtue of the gift of the tenor foresaid, had no power to constitute a procurator-fiscal, albeit thereby he might admit other procurators to procure in his court; and that the right to make procurators-fiscal or clerks, belonged only to the Bishops within their diocese, and not to their Commissaries, whereanent look to the act of Parliament 1609 anent the granting of the commissariots to the Bishops. And the clerk further *alleging*, That the Commissary had a gift from the last Bishop, of that same office, which gave him power also to make deutes therein, and this clerk being received and admitted by the said Commissary, who had the foresaid right and power, and being by virtue thereof in possession many years, the same ought to defend him against the pursuit of the Bishop, in this possessory judgment, while the Commissary's right were taken away by some ordinary pursuit; which allegiance was repelled, and the foresaid gift found null; for, seeing the Commissary could not be both Commissary and procurator-fiscal, as his own gift fell, so also the power to depute to himself in that place, which was not compatible to him to bruik, became extinct.

Act. Mowat.

Akt. Belsher.

Clerk, Gibson.

Fol. Dic. v. 2. p. 291. Durie, p. 309.

1665. February 14.

Sir WILLIAM THOMSON *against* TOWN of EDINBURGH.

No 5.

The office of town-clerk being given *ad vitam*, was found to imply a tacit condition to be also *ad cult. p. am.*

THE Magistrates of Edinburgh having deposed Sir William Thomson, town-clerk, from his office, on this ground, That a tack of the new imposition and excise being set to their tacksmen, (which was to have been subscribed by him as clerk for the deacons of the crafts,) he had given it up to the tacksman and had not taken their subscription thereto, neither to their own double, nor taken another double for the Town, albeit the tack duty was four score thousand merks yearly for two years, and that it being an uncertain casualty, the value of it was most difficult to prove, and not but by the tacksmens own oath; Sir William raised reduction on several reasons, especially that the sentence was unjust, in so far as it was the putting on of an exorbitant and incommensurable punishment, of deprivation from an office of so great value, upon a fault of