

1670. June 18. MR. JAMES WEIMES *against* \_\_\_\_\_.

THIS was a suspension raised upon compensation craved against him from whom Mr. James had the bond charged on.

To which it was ANSWERED,—That there was no place for compensation here, because the suspender having granted bond to \_\_\_\_\_, in the name of the creditor, the said \_\_\_\_\_ to whom it was delivered, filled up Mr. James his name in the bond, for onerous causes: so that whatever compensation may be competent against him to whom the blank bond was delivered, the same can never be objected against Mr. James, unless he offer him to prove, by the said Mr. James his oath, that his name is only filled up therein to the cedents' behoof; for he who grants a blank bond gives power to the party to whom he delivers it to fill in what name he pleases therein, and so renounces any compensation that may be competent to him against him to whom he gives the same, and tacitly passes therefrom.

The Lords found this answer relevant: notwithstanding of this reply, that compensation in law is reputed as payment, and *ipso jure* extinguishes the obligation; and therefore by the very delivery of it to one with whom he had a ground of compensation, he clearly takes away the said bond *pro tanto*, as if payment had been expressly made thereof.

*Act.* Birnie.      *Alt.* Dewar.      *Advocates' MS. No. 24, folio 75.*

1670. June 18. PROCURATOR-FISCAL of the ISLES, *against* WALLACES, Executors of the late Bishop there.

THERE was a competition betwixt the commissary of Glasgow and the commissary of the Isles, who had the right of confirmation of the Bishop's testament.

ALLEGED for Glasgow,—That *regula regulans* of confirmations is *domicilium defuncti et ubi habebat focum et larem*: but so it is, he had his residence, his wife, his bairns, and his family, in Glasgow; and though he was Bishop of the Isles, and died there, yet he had not so much as a pot or a pan there; and when he went there it was only itinerarily, but noways *animo remanendi*.

ALLEGED for the commissary of the Isles,—That he being Bishop there, *presumptione seu fictione juris* he must be presumed to have had his residence there; at the least, by the law of God and the ecclesiastical canons, he ought to have resided there: *Item*, he divided the year and staid all the winter in Glasgow, but the whole summer he was constantly in the Isles. And where it is said he had also his armour and plenishing, both spiritual and temporal, at Glasgow; Sir George Lockhart offered him to prove he had both books and brand in the Isles: *Item*, he died there. As to the non residence Glasgow answered,—that the rest of the clergy had dispensed with that, in respect of his valetudinariness.

The Lords FIND the Isles should be preferred, if at the time of his death he was there *animo remanendi*, which they offered to prove.

*Act.* Wallace.      *Alt.* Lockhart.      *Advocates' MS. No. 25, folio 75.*