

1670. *June 29.* ————— *against* MACCUB and his SPOUSE.

THIS Maccub charges for eight bolls of beer, or the price thereof; which the suspender is decerned to pay by a decret before the sheriff of Dumfries. The reason of suspension and reduction is, that the said decret is null, being in absence; for though a procurator compeared, yet he had no mandate in writ. But the decret is likewise intrinsically null, seeing the claim is proven by witnesses cited out of another sheriffdom, without letters of supplement, or rather witnesses *ultraneo comparentes*: and one of them, being the party who sold the beer to Maccub, and so (the same proving insufficient) by reason of the warrandice wherein he was liable, might gain or win in the cause, could nowise be witness; which by the decret appears to have been proponed, and yet was repelled. On this reason he being reponed, he offered him to prove that the said eight bolls being given to him by the chargers as to a maltman, he told them the same was altogether rotten and insufficient, and that he could make very little good malt out of the same; they bade him make it upon their hazard; they should seek no more nor what he could get of it. *Item*, offers to prove by famous maltmen in the town of Dumfries, who saw the beer before he put it in the steep, and who said that it was nought.

This his intimation of the insufficiency thereof, at the time he received it, was found relevant and admitted to probation.

Weimes and Dickson.

*Advocates' MS. No. 44, folio 77.*

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1670. *June 29 and 30.* ROBERTSONE, Minister of Auchterhouse, *against* The EARL of KINGHORNE, Mr. ROBERT HAY of Dronlaw, and OTHERS.

*June 29.*—The Earl of Kinghorne (as coming in the place of the deceased Earl of Buchan,) being charged at the instance of Robertstone, as minister at the kirk of Auchterhouse, and parson thereof, for the parsonage and vicarage teinds of the same;

SUSPENDS,—Because the Earl of Buchan being patron, and having neglected to present within the six months prescribed in law, the bishop of Dunkeld, *jure devoluto*, presented this charger; and so could present to no more than what the ministers at that kirk of before were in use to receive; but, *ita est*, it is offered to be proven they have ever been in use to serve for a modified stipend, (though no locality can be produced,) and were never presented to the parsonage.

It was ANSWERED,—That such a use *non relevat*, unless the suspender propone on some right, by tack or otherwise, in his person, to these teinds, from the parson (for it was a parsonage) or other titular.

My Lord Stair inclined much to find, that *jus devolutum* (as this was) could reach no farther than to what the ministers of that place were in use and possession of before; seeing *nihil novi juris tribuit*: although it was answered, The bishop, *jure devoluto*, might present to all to what the patron might; but the