

1672. *February 9.* Minister of ——— against His PARISHIONERS.

A MINISTER pursuing upon his decret of locality, for payment of L.20, modified yearly therein for the communion elements; the parishioners EXCEPTED that he could have nothing upon that account, because they never got the sacrament from him. To which it was REPLIED, it was not his fault that they got it not, but their own; he intimated the same to them, and none came to declare their willingness to receive it, and so *per ipsos stetit; in omnibus causis pro facto accipitur id, in quo per alium moræ sit, quominus fiat, L. 39, L. 161 D. de R. Juris.*

To this it was DUPLIED,—That he was in *pessima fide* to intimate to them that he would administrate it, seeing none of them were examined; which being necessarily previous, they were not in a capacity to receive the holy sacrament without it.

TRIPLIED,—That the duply is founded *super propria turpitudine*, seeing they were warned to the examinations, and most contumaciously and irreligiously were absent, and so *quod poenam meretur non potest iis liberationem impertire.*

*Advocates' MS. No. 324, folio 129.*

1672. *February 9.* Anent ESCHEAT of CLERKSHIPS.

IT was doubted amongst the advocates, if an office of clerkship, (whether of a town, sheriff, commissary, or the like, *non refert*;) falls by the clerk's annual rebellion under his liferent escheat; and the same being gifted, whether, the rebel still officiating, only the obventions and profits of the place will belong to the donatar, or if the donatar becomes clerk himself for all the days of the rebel's lifetime, and so may act accordingly; or if the office vaiks in the hands of those who have the disposal of it, whether it be the King or any other, so that they may input another clerk. The casualties resulting from the office will undoubtedly fall under escheat. See Hope *in practicis observationibus patris* upon the title anent Hornings and Escheats, *folio 197*, in the action betwixt Mr. Henry Kinrois and James Drummond. *Sed omnino vide* Craig, page 332; Spotswood *Tit. comprising*s.

I find by the town-council books of Edinburgh, in the year 1565, Mr. Alexander Guthry his clerkship, as fallen under escheat, dispoed to Mr. D. Chalmers, a Lord of the Session, who charged the town-counsel with horning to receive him clerk; the Dean of Guild protested the place fell not, but only the casualty; yet for fear of horning they choosed him clerk, the Laird of Craigmiller, who was Provost, dissenting. See *Joannis Imberti Institutiones Gallorum Forenses, libro primo, capite 59.*

*Advocates' MS. No. 325, folio 130.*