

the King's call, and was in actual possession, and holden and reputed Archbishop ; *Vide L. 3, Barbarius Philippus, D. de Officio Prætoris* ; and they were *in bona fide*, to take a right from him. As for the conjoining, custom has made the same lawful, there being nothing more universal ; as old Sir David Falconer of Glenfarquhar and his son Sir David, were conjunct commissaries of Edinburgh ; Mr Henry Hay, clerk to that commissariat, had got the place also continued on his son ; Sir William Purves had done the same with his office of solicitor to his Majesty ; and the Lyon had the gift of that office to himself and his son ; and Mr William Ramsay, and Mr James Rocheid, were conjunct clerks of Edinburgh.

TRIPLED, That any canonist who understood anything of the investiture of the clergy in church benefices, would confess that translation was absolutely necessary to give him a right to the benefice *ad quem* ; for they go upon two grounds. *1mo*, They account it *spirituale matrimonium* between the bishop and his church : now the marriage knot cannot be dissolved till he be transferred. *2do*, In imitation of the personal rights in the feudal law, their *breve testamentum*, or charter, and their *investitura et inductio in possessionem*, the canons have introduced presentation, collation, and institution ; and where one is transplanted, then the translation is his new investiture and induction unto the possession ; and without that they acknowledge no right in his person, neither to perform spiritual offices within that diocese, or to intromit with the temporality and rents. See *Tit. de translatione clericorum in decretalibus*, and Lancelot's *Institutiones Canonice* : see Dynus's Commentary *ad Regulam 1 Juris Canonici*, and my summary of him. *Vide infra, num. 625, [27th July, 1677, Duke of York against the Earl of Argyle.]* See the like question in Joannes Imbertus his *Institutiones Forenses, libro 1, cap. 16. pag. 69.*

The Lords sustained the clerks their conjunct gifts, in respect of the custom to give the survivance of places, and repelled all the reasons of declarator and reduction against the same.

*Advocates' MS. No. 588, folio 291.*

1677. July.

GRANT against M'KEINZIE.

A CHARTER being granted by the Marquis of Douglas, of the lands of Logie, to be holden ward, yet bearing a licence and faculty to grant subinfeudations of it ; the vassal having given out a part of the lands to be holden blench ; whereupon it being ALLEGED the lands were fallen in recognition, and they defending against it upon the foresaid licence :

The Lords found, it gave no power to feu, but according to law ; (besides blench is not feu) and it could not have been feued under the retoured duty, since the act of Parliament in 1606 : yet they restricted the recognition, because of the probable mistake to the composition, viz. the year's duty paid to the superior. *Vide supra, 1669, Pitreichy and Geicht, November 1676, numero 508, § 6 ; item numero 580, § 3, [November 1676.] [26th June 1677, Birnies against Moray.]*

*Advocates' MS. No. 590, folio 291.*