

answerable for the servants in the Chamber; *answered*, That seeing there is no malversation alleged against him, he cannot be obliged to find caution any more than the other servants in the Bill-Chamber, and the Under-Clerks of Session; and neither the principal clerk himself, nor is it usual for any under-clerk in the kingdom to find caution; and this being a matter of trust, it will be difficult for any clerk in such a case to find caution. THE LORDS refused the desire of the bill.

No 21.

Sir P. Home, MS. v. 1. No 492.

1693: February 2. KING'S ADVOCATE *against* MONCRIEFF.

No 22.

MONCRIEFF of Redie having the King's gift, impowering him for ever to present one of the macers of Session, it was *objected*, *imo*, That the same was null, seeing *beneficium non vacans nequit conferri*, by analogy of the act 23. Parl. 1567; the LORDS repelled the objection, because a power of presenting is a different thing from an actual presentation; and if this was sustained, a right of patronage would lie under the same exception. *2do*, They repelled the objection, that Redie's gift was null on the act 69th Parl. 1587, that his Majesty's casualties shall not be given away in great; for they thought the King might lawfully annex the presentation of the macers to the judicatory of the Session for ever; and if so, why not to one man, which, though inconvenient, was not unlawful?

Fol. Dic. v. 2. p. 291. Fountainhall.

*** This case is No 2. p. 3460., *voce* DESUETUDE.

1693: December 15. Lord TARBET *against* OLIPHANT of Lanton.

No 23.

THE LORDS advised the competition, which arose for the clerkship, on the death of Charles Oliphant, between my Lord Tarbet, as Register, and Mr James Oliphant of Lanton, son to the said Charles, and conjoined with him in the same gift; who *alleged*, That though his father had restricted the gift, yet he could not renounce the *jus quæsitum* to him; and though conjunctions were against the act of Parl. 1685, yet survivances were not; and albeit they be odious in law, yet there are many instances in Scotland, as in commissaries, and in clerkships. Tarbet adhered to the LORDS' act of sederunt, made on the admission of Charles Oliphant; and that the LORDS had caused him to elect, and he had chosen rather to officiate himself, and had restricted the effect of his gift, and prejudged his son; who, being his heir, could not come against his father's deed; and that survivances were odious, and reprobated in law, as inducing *votum captandæ*: So these was no proper survivance here, but only what

Found that a grant of the office of Clerk Register could not exceed one life.