

ANSWERED,---If the Lords find it necessary for trying how far they are paid, the pursuer will cite them *cum processu*.

This the Lords allowed.

*Vol. II. Page 44.*

[See 18th January 1695, *supra*, page 250, *thir same parties*.]

1699. *February 21.* RICHARD HOWISON *against* SIR WILLIAM SHARP of STANYHILL.

MR Richard Howison, minister at Musselburgh, charges Sir William Sharp of Stanyhill for his proportion of stipend, year 1697. He SUSPENDS,—That, for some years before, you accepted money for your stipend; which use and custom I am willing to continue; and accordingly made offer of the same. ANSWERED,—The offer was *intempestivè*, being but in July last; and his decreet of locality contains victual and not money; and, though he accepted money for a year or two, yet that cannot oblige him to do so still. REPLIED,---My offer was as timeous as your charge, which was but a few days before it; and it was too late to declare your electing of victual in July, when all the farms were sold and delivered many months before.

The question was, If the minister was bound first to require, or the heritor to offer. But at last the Lords decerned against Sir William for the price he received for his victual that year, which they considered would not be under the Sheriff's fiars.

*Vol. II. Page 45.*

1699. *February 22.* SIR JOHN RIDDLE of that ilk *against* GEORGE DRUMMOND of BLAIR.

PHILIPHAUGH reported Sir John Riddle of that ilk against George Drummond of Blair. The Laird of Riddle being fined, in the late times, for his own and his lady's conventicles, in £52,000 Scots, at last a transaction was entered into, whereby he was to get a discharge of his fine, and a remission; and Blair Drummond was to use his favour and interest with the Earl of Melfort, secretary:—and for this 9000 merks was paid to Blair Drummond upon his giving them the foresaid discharge of the fine. They now raise a pursuit for restitution of that sum, with annualrent, founded on the 18th Act, 1690, and the 25th Act, 1695.

Blair ALLEGED,---He was not in the case of these acts, which concerned only donatars to fines or forfeitures, which he was not, but only employed to do them a favour in procuring so easy a composition; and that he was no further concerned than as a factor or trustee for Melfort, and might take a gratification for his pains; as was sustained to *Cambo, Lord Lyon*, against *Welsh of Scaron*, on the 28th of January 1696.

ANSWERED,---The act not only reaches donatars, but all other intromitters:

and he who had the power and influence to obtain a discharge and remission could as easily have got the gift of this fine ; so he is all one with a donatar : and it was plain concussion to give the discharge and remission with the one hand, and receive the £500 sterling with the other, or threaten him with executing the full decret. And the case of Welsh differs ; for he had an express contract, whereby they allowed him 1900 merks if he should procure a remission, and that as a remuneration of his pains, which was but like a factor's salary ; which is not so here.

Some of the Lords thought Blair's case not comprehended in the Acts of Parliament, especially considering the great probability that the money went to Melfort's behoof. But the plurality agreed, That trial should be taken, before answer, who received the money ; and, if Blair got it, then that he may condescend and give what evidences he can to whose use the money went ; but did not require a strict probation of the same.

On a bill given in by Blair Drummond, and answers by the Laird of Riddle, the Lords, 29th June 1699, found, This case fell not within the compass of the Act of Parliament ; and therefore assoiyled.

*Vol. II. Page 46.*

1699. *February 24.* PATRICK JACKSON *against* The late ARCHBISHOP of ST ANDREWS and BISHOP of EDINBURGH.

PATRICK Jackson, as collector of the annuity for the second minister of the Canongate's stipend, pursues the late Archbishop of St Andrews, and Bishop of Edinburgh, for the annuity of the houses possessed by them these four years by-gone, extending to £6 sterling, conform to an Act of Parliament imposing it, in 1663.

ALLEGED,---These general acts never comprehend church-men, and, *quoad* them, are wholly in desuetude : Likeas, by *cap.* 1. of the Statutes of King Robert I, the clergy are exemed from all burdens ; which has been ratified by many Acts of Parliament both before and since the Reformation. *2do.* By the acts of the Town-council of Edinburgh, ministers have been declared free of annuities.

ANSWERED,---The Bishops were sitting in the Parliament in 1663, which imposed this annuity, and did not exeme themselves nor ministers from it ; and any acts which have been made was only *ex gratia* to poor indigent ministers, and cannot be extended to Bishops. Neither can the Town-council of Edinburgh privilege any to the prejudice of the ministers of the Canongate.

The Lords repelled the defence, and found them liable ; but, in regard it was alleged they were overstented, they were reponed to their oaths what was their true rent.

In Joseph's time we find the Egyptian priests their lands exemed from any tax to the King. And the Jewish priests, in Ezra and Nehemiah's time, were declared free of all tributes by Artaxerxes's letter.

*Vol. II. Page 47.*