

No 168.

to authorise the common clerk of the burgh to be notary to such resignations and infeftments.

In support of this application, instances were given of persons authorised by the Court to officiate as commissaries *pro tempore* during the vacancy of the office. The election of Magistrates and Councillors for the city of Edinburgh, at Michaelmas 1745, having been obstructed by the rebellion, the Court, *anno* 1746, granted commission to the persons who had been Bailies the year preceding to receive resignations and grant infeftments of burgage tenements. And the double election of the burgh of Linlithgow being reduced, the Court, December 1755, granted warrant and commission to those who had been Bailies the year preceding, ' for receiving resignations and giving infeftments of burgage tenements, until Bailies be regularly established ; and authorised the common clerk of the burgh to be notary to all such deeds ; and ordained instruments of sasine to be recorded, either in his prothocal, or in the register of sasines within the burgh ; and allowed the warrant to be extracted without abiding the course of the minute-book.'

The desire of the present petition was granted in the same terms.

Sel. Dec. No 184. p. 249.

* * * See No 155. p. 7435. and the three cases which follow it.

No 169.

A man was authorised by the Court of Session to change his name, in order to succeed to an estate.

1764. *January 20.*

JOHN MUIR, Supplicant.

AN estate being disposed to John Muir writer to the signet, upon this condition, That he assume and use the surname of *Chalmer* in all time after, he applied by petition to the Court of Session, setting forth, that being a clerk to the signet, an agent in the Court of Session, and a notary-public, he could not alter his subscription without their Lordships special authority ; and, therefore, praying their authority to that end.

' THE LORDS allowed and authorised the petitioner to change his name, and to act under the name of *Chalmer* in the several capacities above mentioned.'

Sel. Dec. No 212. p. 278.

1765. *August 9.*MERCHANT COMPANY and TRADES of EDINBURGH *against* MAGISTRATES.

No 170.

The Founder of an Hospital appointed certain official persons to interpret the regulations he had

GEORGE HERIOT, founder of the hospital of that name in Edinburgh, having, by his will, given power to Walter Balcanqual, Dean of Rochester, to establish statutes for the administration of the hospital, ordained, *inter alia*, ' That the Chancellor, the two Archbishops, the Lord President of the College of Justice, his Majesty's Advocate for the time being, shall have full power to interpret the same, and to determine all controversies arising about the interpretation ;

‘ so that whatsoever any three of these five met together, and all parties interested being convened, shall declare in their consciences to come nearest the true meaning of these statutes, that, and nothing but that, shall be taken for the true meaning of the same, and in all points be observed.’ The trades of Edinburgh having brought an action against the Magistrates, as administrators of that hospital, for feuing the hospital lands, as alleged contrary to the tenor of the deed of mortification, the pursuers *argued*, That as a *quorum* of these governors or interpreters of the hospital regulations did not now exist, the powers originally given them belonged to this Court as a court of equity, and vested with the same powers as the Roman Prætor and the Chancellor of England; and they therefore *contended*, That it was competent for this Court to prescribe instructions and limitations of the right of feuing exercised by the Magistrates, so as not to be prejudicial to the hospital. *Answered* for the Magistrates, *1mo* By the above clause of the will, the officers therein named have no other power than to interpret the statutes, but not to make regulations; *2do*, This Court, as in the case of the failure of tutors, could at the most only authorise the remaining nominees to act as a *quorum*; *3tio*, This Court never employs its equitable powers but in cases of necessity.—THE LORDS found they had no power of making the limitations required.

Fol. Dic. v. 3. p. 349. Fac. Coll.

* * * This case is. No 2. p. 5750. *voce* HOSPITAL.

1773. July 31.

The MODERATOR of the Presbytery of Caithness, and MR ALEXANDER POPE, Minister of the Gospel in the Parish of Reay, in said Presbytery, *against* The HERITORS of the Parish of Reay.

THE parish of Reay is situated partly in the county of Sutherland, and partly in that of Caithness. It had no parochial school in terms of the statute 1696. Various attempts were made to obtain that establishment, all which having proved ineffectual, the minister of Reay, with concurrence of the presbytery, raised a declarator, founded on the act of Parl. 1696, c. 26. setting forth, that a citation had been given to the heritors to meet and execute the same, which they had contemned; that, thereupon, the presbytery applied to the Commissioners of Supply, but who also refused to convene, or, being convened, refused to comply with the requisite of the statute. The libel concluded, that the parish of Reay ought to have the benefit of the act 1696; and the refusal or neglect of the heritors of the parish, and Commissioners of Supply, ought not to be prejudicial thereto: And, therefore, it ought and should be found and declared, that, in consequence of such neglect or refusal, this Court hath authority, power, and jurisdiction, to execute the statute 1696; at least, that the heritors

No 170.

made. Some of the offices had been suppressed, so that there did not remain a *quorum* of the nominees. The Court refused to interfere.

No 171.

The Court interposed in a case where neither the heritors of the parish, nor the Commissioners of Supply, would execute the act 1696, cap. 26. for settling of schools.