

No 14. be, if he offered to restore the stolen goods, and make up the damage. And the making up inventories, after you are quarrelled in a process, neither answers the act of Parliament, not the pupil's interest.—THE LORDS considered that tutors taking the liberty to dispense with that excellent law, and arbitrarily to frame their inventories when they pleased, was of the utmost consequence to pupils; and thought they had both grossly malversed, and by the contradicting one another, the pupil could not but suffer; and being nominate in a testament, they were not obliged to find caution; whereas, if both their offices were vacated, there would be room to get a tutor-dative from the Exchequer, who behoved to find sufficient caution to the pupil's advantage. There were only two difficulties stood in the way, the first was, that the pupil's affairs might suffer in the *interim*, till that were obtained. But for this it was *answered*, the Lords could authorise one to act *medio tempore*. The second was, that Carruthers could not be removed summarily, without a formal process being raised against him; but it was suggested, the friends had raised a summons against him as suspect, which the LORDS allowed to be taken in *incidenter*, in Mr Carruthers' process against Sinclair, and remitted to the Ordinary in the cause to hear him, why he should not be removed from the office, as well as Mr Sinclair, he being *in pari casu*; and the LORDS resolved religiously to observe the tenor of that good law. Some thought this threatening to lay them both aside, might have an effect not very advantageous to the pupil, to make them pack up their differences and agree, and so drop both their complaints, unless the friends of the family prevent it. See TUTOR and PUPIL. PROCESS.

Fol. Dic. v. 1. p. 152. Fountainhall, v. 2. p. 711.

1779. June 16. ANGUS CHRISTIAN against JOHN SYME.

No 15.
The Lords found, that a member of the College of Justice, residing in Canongate, was not entitled to an immunity from payment of the annuity for support of a minister, on the score of the privileges of the College of Justice.

THE Magistrates of the Canongate are entitled, by an act of Parliament in 1663, to exact an annuity for the maintenance of a minister from the possessors within that burgh. John Syme, writer to the signet, possessor of a house in the Canongate, having refused to submit to this exaction, the collector of the fund pursued him before the Bailies of the Canongate for payment of the annuity.

In defence, Mr Syme *contended*, That he was exeemed from this taxation by his privilege as a member of the College of Justice. The Bailie pronounced the following interlocutor: 'Having considered the libel and defence, with the act of Parliament imposing the annuity in question, in respect the said act imposes the said annuity, without exception of any person or persons, of whatever degree, quality or place, upon pretence of any privilege or pretext whatever, repell the defence, and decern.' The defender afterwards brought the cause into this Court by advocacy, and

Pleaded in support of his defence, The act 1537, c. 68. gives an express exemption to the Lords of Session 'fra all paying of taxes, contributions, and uther extraordinar charges to be uplifted in ony time coming.' This privilege was extended to the whole College of Justice, by act 1661, c. 23.; and the act mentions the reason to have been, 'because the saids persons *must wait daily* upon our said Session, except at feriate times, and therefore should be 'privileged.'

These statutes seem to import an exemption to the privileged persons from such assessments in every part of the kingdom. But, at least, they give an exemption from the taxes of the place where the Court is held, and where the members daily attending it reside.

The Canongate is the residence of many of those members who attend the business of Court. As, therefore, the inductive cause of granting the exemption applies not merely to Edinburgh, but likewise to the Canongate, those members of the Court who reside in either of these places, are equally entitled to the privilege. Accordingly, the Magistrates of the Canongate have never pretended to exact the impost exigible on wines and other liquors, from members of the College of Justscè residing there.

Answered for the pursuer, The exemption from taxes given to the College of Justice, is regulated, as to its extent, by the immemorial usage. It is now explained by that practice, to be nothing more than an immunity from all annuities and taxations due to the town of Edinburgh.

Impost is not exacted from the members of the Court residing in the Canon-gate, because it is levied by the Magistrates of that burgh, not for their own use, but for the use of the town of Edinburgh, to the Magistrates of which they are, by ståtute, accountable. But the annuity in question is levied for purposes within the burgh of Canongate, and has been constantly exacted from every member of the Court residing there, without any opposition, till now.

At any rate, whatever interpretation is put on the ancient statutes conferring this privilege, the act 1663 derogated from these statutes, and, so far as concerns the annuity in question, bars any plea founded upon them. The words of the act imposing the annuity are explicit: 'Without exception or exemption of any house, of whatsoever nature or holding the same be of, or of *any person or persons, of whatsoever degree, quality, or place*, upon pretence of any *privilege* or pretext whatsoever.'

THE COURT 'remitted the cause to the Bailies *simpliciter*.'

Lord Ordinary, *Stonefield*. Act. *Rac.* Alt. *Dalziel.* Clerk, *Menzies*.

Fol. Dic. v. 3. p. 135. Fac. Col. No 77. p. 149.