

put back to the legal course, wherein he will neither lose his debt, nor be prevented by any other ; for there is no other adjudication but this.

The Lords found the reason of reduction relevant against that member of the decret decerning payment ; and, as to that point, found it null, and reduced the same ; and the adjudication thereupon, in consequence.

*Vol. II, Page 465.*

1676. *December 5.*      *LOWRIE against ANGUS.*

[*See page 208.*]

THE process betwixt the parties being discussed, and observed upon the 14th day of November last, yet being heard and reported again, the charger ALLEGED that it was the custom of all provident skippers to have a pump-stelling covered with pitched canvas, to guard against the spouting of the pump ; which was wanting in this ship, and therefore the damage sustained by the charger was through his fault : neither is there any cause condescended upon, whereby the ship or pump became leaky, which could not be foreseen at the loosing, conform to the former interlocutor ; and, therefore, the charger craved his allegiance to be admitted to his probation ; specially seeing the skipper's witnesses were to be his own seamen, and it would be of dangerous consequence if the spoiling of merchants' goods might be evacuated by such probations.

The Lords would prefer neither party to the probation ; but, before answer to the relevancy, allowed either party to adduce witnesses, what the custom of skippers to secure their pumps was, and what was the cause of this pump's becoming leaky or spouting, or if there was any storm or stress of weather in the voyage.

*Vol. II, Page 471.*

1676. *December 13.*      *JOHN INGLIS against The CREDITORS of EAST-BARNS.*

IN a competition amongst the creditors of East-barns, Mr John Inglis craves preference, because he stands infest by the common debtor, long before any other creditor.

It was ANSWERED, That his infestment is base, and the other creditors are infest upon apprisings, before any possession in his person.

It was REPLIED, That he produces discharges of four years' annualrent of his sum, before the common debtor's son's infestment, from whom the creditors have apprised.

It was REPLIED, That this discharge can import no possession by his infestment, which is conditional, That if he be not paid of the sums due to him, and relieved of his cautionary, he should enter to the possession of the lands ; but this discharge is only of his annualrents by his debtor.

It was DUPLIED, That where there is no ground of simulation, a base infestment is valid ; especially being for warrandice or relief, whereby it can attain no possession till distress. *2do.* This discharge doth expressly relate to his infestment of relief.

The Lords sustained the reason of preference on the said Mr John Inglis his infestment, relevant, in so far as concerns the sum due to him, whereof he received annualrent by the discharges produced.

*Vol. II, Page 478.*

1677. *January 3.* The EXECUTORS of MR GEORGE HUTCHISON *against* The MAGISTRATES of IRWING and COLLEGE of GLASGOW.

MASTER George Hutchison, being indulged by the council to serve as minister to the kirk of Irwing *in anno* 1669, did accordingly enter and serve the whole charge. But, *in anno* 1672, there was an act of council, ordaining two indulged ministers for every indulged kirk, and declaring, that if they did not enter accordingly, the one half should be vacant, and should belong to the Colleges, according to an Act to be made in that session of Parliament. And some days after, there was an Act of Parliament made, applying the vacant stipends of all churches to the universities; yet the council, considering that few of the ministers entered in conjunction, did, by several Acts, grant the whole stipend to those who served the whole cure. The magistrates of Irwing gave bond to the College of Glasgow for the half of the stipend 1672, which was consigned; and a back-bond granted, that if the College prevailed against the minister's successors, it should be paid accordingly.

It was ALLEGED for the College, That the warrant of the council to pay the minister's executors, was *parte inaudita*; and the indulged ministers having only right by the council's warrant, and during their pleasure, therefore they might and had declared the one half vacant, and apply it to the universities.

It was ANSWERED, That the College can have no right, because the act of council relates to an Act of Parliament to be made; which Act of Parliament bears only,—That where the kirks are vacant, the stipend shall be the university's; but this stipend was not vacant *in anno* 1672. *2do.* Though the act of council had been simply to make the one half vacant, in favour of the universities, yet the council may repeal their own act, in whole or in part.

It was REPLIED, That though they may repeal, yet it can only be *ad futura*; and this half year in question was long after the year was past, *et fuit jus delatum* to the College; which thereby becoming their private right, the council could not take it from them.

It was DUPLIED, That if this reason were good, the colleges behoved to have right to the half of all the indulged kirks in Scotland, for there is *jus delatum* in all time after the Act; but it is unquestionable that a general rule, proceeding upon the free pleasure of authority, without any antecedent private right, though thereby a benefit would accrue to any private party, yet thereby the same authority is in full capacity to recal their act, either as to the future, or, if it be so expressed, *à principio*. And, though private parties be secured of what they have recovered, as *fructus bonæ fidei percepti*, yet, so soon as the Act is repealed, their interest ceases as to what is not paid.

The Lords found, that the College had no right, by the Act of Parliament, but by the act of council; and found, that the council might repeal or qualify their own act, either as to time coming, or *à principio*, if they so express it;