

1701. *December 18.* MR. GEORGE TURNBUL *against* The HERITORS and KIRK-SESSION of DALMENIE.

MR. GEORGE TURNBUL pursues the heritors of Dalmenie for a year's stipend, from Whitsunday 1689 to Whitsunday 1690, libelling, that he had right thereto, as having preached and exercised the rest of his ministerial function in the said parish, at the desire of the people; the kirk being then vacant, by the decease of the former episcopal incumbent.

Compearance was made for the Kirk-Session, who craved to be preferred; because by the 2d Act in Parliament 1690, Presbyterian Ministers who were thrust from their churches since January 1661, were restored, and allowed access to their churches forthwith; and also, they were thereby provided to the benefices and stipends for the whole year 1689, where the churches were vacant; and where they were not vacant, their entry was declared to be to the half of the said preceding benefice: and Mr. Alexander Hamilton, who was thrust from his church of Dalmenie, being thereby reponed, did mortify the stipend libelled to the poor of the parish, who craved to be preferred in his right.

It was ANSWERED,—*1mo*, The pursuer is as expressly founded in the 5th Act of the same session of Parliament, declaring all churches deserted; or where the conformed ministers were deprived or dead, being supplied by Presbyterian ministers, by the desire or consent of the parish, the said ministers should have right according to their entry in the year 1689. *2do*, Mr. Alexander Hamilton had never returned, or owned his right to the parish of Dalmenie, but preached in Edinburgh during the said space, and had his stipend there.

It was REPLIED,—Mr. Hamilton was reponed by the 2d Act, Parl. 1690, whereby he had forthwith free access to his church; so that the posterior act in favours of the pursuer, as exercising his ministry in that parish, could take no place, because the parish of Dalmenie was not then vacant. *2do*, *Esto* Mr. Hamilton being infirm, did not return to exercise his ministry in that parish, he was only accountable to the church, but cannot be called in question by the pursuer. *3tio*, Mr. Hamilton did not enjoy any benefice by a legal constitution in Edinburgh, but what he received was by a free and voluntary contribution.

The Lords found, That Mr. Hamilton never having returned to Dalmenie, but having preached in Edinburgh, and received a stipend there, though by contribution, Mr. Turnbull was preferable, he proving that he preached and exercised other parts of the ministerial function in Dalmenie during the space libelled.

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1701. *December 25.* JOHN INGLIS *against* INGLIS.

JOHN INGLIS being, upon a brief of idiocy, found, by an inquest, to be an idiot many years ago, he now raises a reduction and declarator, calling his nearest relations, and libelling, that he is now, and hath been of several years bygone, become *rei sui satis providus*; and concluding, that he ought to be so declared,

and that he ought to have the management and direction of his own means and affairs.

In this process, he produces several testificates, that he has reconvalesced; and there being no compearance for the nearest relations called, craved a commission for proving his reconvalescence; insisting particularly on this ground, that he had attained to an old age of seventy years, or thereby, and was not fit to travel, and that his reconvalescence was notourly known in the shire of Nairn, where he lived, which was of great distance.

The Ordinary thought fit to report a matter of that importance to the whole Lords; who having considered and reasoned upon the case, granted commission for proving that the pursuer was habit and repute *rei sui providus*, and reconvalesced; but refused to grant a commission for proving that he was reconvalesced, and *rei sui providus*; and found, that he being cognosced idiot by an inquest, he ought to be sisted in their presence, and cognition taken upon proper knowledge that he was now convalesced, and that the evidence that should appear to them, upon inquiry, and discoursing with him, should be advised with a report of the said commission, that he was habit and repute *rei sui providus*, before they would proceed to reduce the verdict of the inquest, finding that he was idiot.

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1701. *December 30.* DAVID FRENCH, *against* ARCHIBALD ROBERTSON, Factor for the estate of Carden.

IN the count and reckoning, at the instance of David French, purchaser of Carden, the pursuer charges the factor with annual-rent of his yearly intromission, within a year after the same fell due, conform to the Lords' Act of Sederunt last July, 1690.

It was ALLEGED for the factor,—No such Act of Sederunt was intimated, or in the least known to him, nor is it in observance; neither could he be obliged to lend out his intromissions, seeing he made frequent payments by the Lords' warrants, and was obliged to keep a stock of money to answer the same.

It was ANSWERED,—That the of Act Sederunt was opposed, which is founded upon natural law and equity, laid down by the Lords, as a constant and fixed rule to be observed in all time coming, as has been frequently done by their predecessors, and was peculiarly proper to be done in relation to the management of estates sequestrated by the Lords' authority; and they having resolved and determined, that all factors of their nomination, should be liable to annual-rent, there needed no special intimation to any factor. And it is without ground to allege, that the act is in desuetude; for, though many factors do too frequently manage creditors in such manner as they are not brought to exact accounts, yet the Lords did never give any countenance to such practices: and, if this factor were not made liable for annual-rent, then no other factor could be ever liable in any time coming; and such a decision would weaken the authority and respect that is due to Acts of Sederunt.