

COLLEGE OF JUSTICE.

1582. December.

EARL of BOTHWELL *against* MAITLAND.

THE Earl of Bothwell pursued Mr John Maitland, sometime prior of Coldingham, before the commissaries of Edinburgh, to hear and see the gift of the benefice of Coldingham made sometime to the said Mr John, to be reduced and retracted. Mr John meant him to the LORDS of Session, and *alleged*, That be reason he was one of the ordinar number of the College of Justice, that into civil actions he could have no other Judges but the said LORDS; and, that be reason of the acts of Parliament, and privileges grantit to the LORDS. To the which it was *answered*, That albeit, there could be no other Judges to any member of the Session and College of Justice, but the LORDS' selves, into civil actions and causes; yet this was not a civil action, but *causa ecclesiastica et alterius fori* upon the title of a benefice; into the whilk action and cause, the commissaries of Edinburgh have been only judges competent, since the first erection of their commissariat. To this it was *answerit*, That the commissaries are but *tanquam iudices delegati* to the Lords of Session; and albeit they have given them power to judge into the petitory of all ecclesiastic causes, yet they have not abdicatit the jurisdiction from themselves; for the decreets that are given before the commissaries will be reductit, *in secunda instantia*, before the Lords; and also if any of the College of Justice commits a crime, he will underlye the law before the Justice and his deputis; and the Lords' selves are not Judges competent to cognosce thereintil. THE LORDS, after long reasoning among themselves, fand, be interlocutor, that, albeit, the cause was ecclesiastic, *et mere spiritualis*; yet they might cognosce thereintil *in prima instantia*; in respect the said Mr John was one of their ordinar members; *licet bona pars fuerunt in contraria*.

Fol. Dic. v. I. p. 151. Colvil, MS. p. 346.

1593. June 7.

LD. TRAQUAIR *against* LADY NEWBATTLE.

FOUND, That the relict of a Lord of Session enjoys the privileges of her deceased husband during her widowhood. See APPENDIX.

Fol. Dic. v. I. p. 151. Erskine, MS.

No 1.

The exemption of the members of the College of Justice from all civil courts, except the Court of Session, was found to extend even to causes merely spiritual, ecclesiastical, and consistorial.

No 2.