

No 2.  
presumed to  
have been ap-  
plied in *utile-*  
*tatem ecclesiae.*

the possessor had received money, as the defenders offered them to prove he had done by his acquittance; because the said money was presupposed to have been converted *in utilitatem ecclesiae*; and also refused to give them a day to call the successor, because the said Mr Archibald, pursuer, was successor, who was present at the bar, and so he should seek his warrant by way of exception, quia quæ de evictione tenet actio eundem ab agendo repellit exceptio.

*Fol. Dic. v. 2. p. 346. Maitland, MS. p. 207.*

1580. April 22.

LORD BOYD *against* ABBOT of KILWINNING.

No 3.  
An abbot and  
convent o-  
bliged to war-  
rant a feu  
granted by  
their prede-  
cessors.

THE Lord Boyd pursued the Abbot of Kilwinning to warrant to him a feu, set to him by his predecessor Hamilton. It was *answered* by Hamilton, That he ought not to warrant the same, because he was in feu of the same lands set to him by another person, which was confirmed first; and according to the act of Parliament made at Stirling, the first confirmation makes the feu to be available and stand, albeit it be last set, and the other feu to be taken away by exception or reply. To this was *answered*, That notwithstanding of the act of Parliament, yet he ought to warrant his predecessor's deed, because he knew the first set to be set *aut saltem scire potuit*, because it was subscribed by the same Convent et sic predictus commendatarius videbatur commississe crimen stellionatus in locando et alienando eandem rem duabus diversis personis. To this was *answered*, That he ought not to warrant; for how should he be decerned to warrant the thing which was null of the law? For the first feu being declared null in itself of the law, there could no warrantice follow upon the same. THE LORDS pronounced *definitive* the Abbot to warrant the said feu, albeit it was null in itself, and taken away by the first confirmation.

*Fol. Dic. v. 2. p. 346. Colvil, MS. p. 283.*

A. *against* B.

No 4.

A PRELATE may oblige himself, and his successors, to warrant lands disposed by him *titulo oneroso*, with consent of the Convent or Chaptour.

*Fol. Dic. v. 2. p. 346. Kerse, MS. fol. 9.*

1662. February

VISCOUNT of STORMONTH *against* THE CREDITORS of ANNANDALE.

No 5.  
A man may  
be served heir  
to the contra-  
vener of the

BY a tailzie under the Great Seal, the Lordship of Scoon, upon the resignation of David Viscount of Stormonth, was resigned in favours of the said David and the heirs male of his body; which failing, to Mungo and the heirs male of