

son,—That the decret was unjustly given for the sum of £800, upon the oath of the executor, to his mother; because an executor's oath cannot constitute a debt to exhaust the testament in prejudice of the nearest of kin, or legacies contained in the testament :—

It was ANSWERED, That one of the legatees and nearest of kin being the executor's own daughter, the father's deposition is a sufficient probation of a debt; seeing, in law, it cannot be presumed that a father would depone in prejudice of his own child; which differs the case where an executor hath not that relation to the legators or nearest of kin: so that it was sufficient that the daughter did give her oath of credulity, if she had not reason to believe what her father deponeed was true.

The Lords, finding that this case might be of great importance,—before answer ordained the daughter to be examined, if she was informed, or did know the verity of the debt; and, if she denied the same, they would then consider if her oath of credulity were sufficient against her.

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1673. *December 18.* MR JOHN GIBSON, PARSON OF OLD Hamstocks, *against* PATRICK HEPBURNE AND OTHERS.

IN a pursuit, at the said Mr John's instance, as presented to the parsonage of Old Hamstocks, against the heritors of the parish, for reparation of his manse, conform to an account made after visitation, by ministers appointed by the bishop, extending to seven hundred pounds and odds:

It was ALLEGED by the heritors, that the pursuer, by his presentation, being parson, and having right to the whole teinds in the parish, which was a very considerable benefice, and exceeding the value of some bishoprics, could not crave the benefit of the Acts of Parliament anent reparation of manses, which was only competent to ministers who had modified stipends out of the tithes; whereas such parsons ought to be looked upon as titulars of great benefices, such as bishoprics or abbacies.

It was REPLIED, That, by all the several Acts of Parliament anent reparation of manses, all ministers serving the cure, without distinction, may have the benefit thereof; and parsonages and vicarages not being ecclesiastical dignities, which are accounted great benefices, they cannot be debarred upon that pretext.

The Lords did repel the defence, in respect of the reply; and found, that albeit patrons had no right to the tithes, but must present parsons and vicars to the whole benefice, yet that will not prejudge them of the benefit of the Act of Parliament, if either they want or have not sufficient manses.

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1673. *December 19.* JOHN M'LURG *against* GORDON OF KIRKONAL.

JOHN M'LURG, being assignee to a bond granted by Kirkonal's father and elder