

*non residentibus*, requires two conditions: 1mo, That there be lesion and prejudice by the absence. 2do, That they be *moniti et requisiti revertere*: none of which can be subsumed here. And Sir William Primrose was not deposed for non-residence, but for not bringing in the notary's prothocal books, conform to the 22d Act Parl. 1617. And it is by the injunctions of the books of Sederunt that Commissaries must reside.

And yet this was not required by the decision, 6th February 1666, *Archbishop of Glasgow against Logan*.

This case being submitted to the President, the Doctor got 2700 merks for his 4000, and the intermediate profits. *Vol. I. Page 483.*

1687. November 30. *ERSKINE of ALVA and STIRLING of AIRDOCH against GEORGE RAMSAY.*

THE case of Erskine of Alva and Stirling of Airdoch *against* Major George Ramsay, was reported by Kemnay. Sir Alexander Hope of Granton having given his Lady, Dame Anna Bill, a disposition to his moveables, it was quarrelled by thir legatars of Sir Alexander's, as *donatio inter virum et uxorem*, and revoked by his posterior testament leaving thir legacies. The Major, as assignee to the Lady, for fortifying it, offered to prove it depended on this onerous cause, that Sir Alexander got £2800 sterling of tocher with her, out of the Chamber of London. And a commission having been granted for proving it, the term was circumduced, and decret given: which was suspended on this reason, that, the commission being directed in 1684, they could not then get it executed, because, the King having issued out his writ of *quo warranto* against the city of London's charter, it was declared void, by the Lord Chief-justice Sanders, and there was no access to their writs and archives; and so they were not *in culpa aut mora*; and it was only an act before answer. REPLIED, —The onerous cause was admitted only to be proven by a writ under Sir Alexander's own hand, and not by extrinsic records, as recognizances, and statute staple, which are not probative with us; but the Lords had reserved to themselves to consider what these should operate.

The Lords, on Kemnay's report, turned the decret into a libel, and reponed the defenders, they paying £40 of expenses for that decret; and renewed the commission to London, to be reported against the 10th of January next.

*Vol. I. Page 483.*

1686 and 1687. *ALEXANDER HAMILTON against SIR JOHN RAMSAY of WHITEHILL and DAVID PLENDERLEITH of BLYTH.*

See the prior part of the Report of this case, Dictionary, page 16,404.

1686. December 17.—*ALEXANDER Hamilton against Ramsay and Blyth,*