

others, anent his right to a servitude of pasturage in some lands,—the defence in the act of litiscontestation being that they had prescribed an immunity from the pasturage, and the reply being on interruption; the reply was proven, but not the defence; whereon my Lord Colvil craved to be reponed to other defences, seeing he was minor at that time, and abroad. The Lords reponed him, if they were *in jure* and instantly verified.

Then he ALLEGED that the pursuer's title was null, being a feu of kirk-lands granted by the Abbot in 1553, and neither confirmed by the Pope nor the King, as is required by the 7th Act of Parliament, 1584. The Lords found the said defence relevant and proven by the charter lying in process; but sustained this answer for eliding it, that they offered to prove confirmed.

*Vol. I. Page 680.*

1695. *November 27.* WILLIAM KING and INGLIS *against* ORR and OLIPHANT.

THE suspension presented by William King and Inglis against Orr and Oliphant was reported by Arbruchel. The charge was on a decreet of removing from a shop at the head of Niddry's Wynd in Edinburgh. Their reasons were, That, albeit the decreet was given declaratory before the term, yet it decerned expenses where there was as yet no contumacy; and that he offered to prove, by the charger's oath, she promised never to remove him so long as he paid the former maill; and that, by the perpetual custom of that shop, the entering tenant bought always the brittle ware of his predecessor, as their glasses and lame-pots, &c. All this being formerly discussed, the Lords now repelled the same. Whereupon they recurred to a new reason, That they offered to prove she had consented to a set for another year, and taken earnest thereon. Some doubted of the competency of this allegiance now, after she had, upon oath, denied any promise not to remove them. However, the Lords sustained it, that she might clear her meaning; but *cum onere expensarum* if they succumbed; but especially to consider how far she may be made liable to the succeeding tenant for his damage in not being duly entered; and modify the same against him, if it shall be found that he sat violently contrary to law.

*Vol. I. Page 680.*

1695. *November 28.* MR JAMES KIRKWOOD *against* MR JACK.

MR James Kirkwood, late schoolmaster at Lithgow, now at Kelso, having been pursued before the Presbytery for some indecencies in his employment, he raises a pursuit, before the Commissaries of Edinburgh, against Mr Jack, minister at Kelso, for slanderous and reproachful expressions; that he was destitute of the grace and fear of God, and unfit to be trusted with the education of youth, and such like words. The minister presented an advocacy of this process to my Lord Philiphaugh; upon whose report the Lords advocated the