

No 295.

1610. February 1. BISHOP OF DUMBLANE *against* HIS COMMISSARY.

COMMISSARY not compelled to make continual residence in the principal town of the diocess; but if his clerk remain ordinarily there, and himself resort thither two days in the week; and after, if the service and affairs of the lieges require it, is found sufficient.

*Fol. Dic. v. 1. p. 506. Haddington, MS. No 1772.*

No 296.

The commissary clerk must give personal attendance, unless necessarily absent.

1672. July 11. FLEMING *against* NIMMO.

THE Commissary of Glasgow pursues the clerk of the commissariot, for declaring that he ought to reside and exerce the office in his own person, and that for non-residence or malversation he ought to be deposed. The defender *alleged* absolvitor, because his office depends not upon the Commissary, but he hath it immediately by gift from the Archbishop; *2do*, In his gift he hath a power of deputation, and hath a sufficient depute who exerceth the place; and albeit the Bishop might pursue him to be deposed, the Commissary hath no interest. The pursuer *answered*, That he hath good interest by his office to remove an insufficient or malversant clerk, not only upon the account of justice, which he ought faithfully and speedily to dispatch, but also upon his own interest, to whom the profits of the place belongs; neither doth the power of deputation exempt him from attendance, but only in cases when he hath need to be absent, but not to be absent at his pleasure, or to enjoy the benefits without any care of the office.

THE LORDS sustained the declarator, and found the clerk obliged to attend, unless he were absent upon just and necessary occasions.

*Fol. Dic. v. 1. p. 506. Stair, v. 2. p. 99.*

1738. November 28.

MAGISTRATES OF LANARK *against* THE COMMISSARY OF LANARK.

No 297.

A Commissary was found obliged to hold his courts in a particular town, unless upon extraordinary emergencies.

THE Commissary of Lanark having established a depute at Lesmahagow, for the convenience of the district adjacent to that village, of which the Town of Lanark complained by suspension, it was found by a small plurality, 'That he could not establish such depute, and that he is obliged to hold his courts in the town of Lanark, and there only.'

A quality at the same time was added, which there was no dispute about, viz. Without prejudice to his sealing and opening the repositories of persons deceased, granting summary warrants, and other acts of administration, and with-

out prejudice to the Commissary to hold courts *pro re nata*, upon any extraordinary emergency, at any place within the commissariat.

No 297.

The judgment proceeded chiefly upon the general reasoning, that the immemorial custom of holding the Commissary Courts only at Lanark, presumed an original constitution; but as there was also produced an old decree in absence, to the like purpose, at the instance of the town of Lanark, this judgment is the weaker on the general point. It seems unreasonable, that, especially in a wide commissariat, a depute may not be established for the convenience of places remote from the principal seat of the Commissary.

*Fol. Dic. v. 1. p. 506. Kilkerran, (JURISDICTION.) No 1. p. 301.*

\*\*\* See Div. 2. Sect. 3. *b. t.*

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DIVISION IX.

Dean of Guild Court.

1631. July 21. ADAMSON *against* MASTERTON.

No 298.

THOUGH the Dean of Guild be an officer and Magistrate of the same burgh, yet his jurisdiction and Court is distinct, and not subordinate to the Bailie court.

*Fol. Dic. v. 1. p. 507. Durie. Spottiswood.*

\*\*\* This case is No 198. p. 7483.

1743. June 3.

BURGH and INHABITANTS of the Canongate *against* The TOWN of Edinburgh.

No 299.

THE LORDS found, that the Dean of Guild of Edinburgh *qua* such, has no jurisdiction over the Canongate; but having considered the act of Parl. 1698, c. 8. found that the Dean of Guild of Edinburgh and his council, have the only right to grant jedge and warrant for new buildings in the Canongate; and that they may grant the same within the town of Edinburgh.

*Fol. Dic. v. 3. p. 355. Kilkerran, (JURISDICTION.) No 1. p. 305.*