

No 278.

1744. *January 25.* PRINGLE *against* PRINGLE.

ON the verbal report of the Lord Justice Clerk, it was found, that the Commissaries were judges competent to the reduction of a testament *ad effectum*: of determining, whether or not the office of executor was thereby conferred.

*Fol. Dic. v. 3. p. 354. Kilkerran, (JURISDICTION of the COMMISSARIES.)*

*No 2. p. 301.*

1747. *December 14.*The COMMISSARIES of EDINBURGH *against* The COMMISSARY of DUNKELD.

No 279.

The parishes of Abercorn, Cramond, and Aberlady, are within the commissariat of Edinburgh.

THE Commissaries of Edinburgh and Dunkeld raised mutual processes of declarator against each other, concluding, that the parishes of Abercorn, Cramond, and Aberlady, were within their territory, and that they had the sole right of exercising the commissariat jurisdiction over them.

This question branched into two, *1st*, Whether the disputed parishes had originally been part of the diocess of Dunkeld; and, *2dly*, Whether, supposing them so to have been, they were not made part of the commissariat of Edinburgh, upon the creation of that jurisdiction by Queen Mary, and remained so, notwithstanding the restoring to the Bishops the power of naming their Commissaries, and had been possessed accordingly.

*Pleaded, 1st*, for the Commissary of Dunkeld, He produces a charter by King James II. to the Bishop of Dunkeld, of the lands of Aberlady, Preston, Cramond, and Abercorn, erected into a free barony, which lands belonged formerly to the Bishop; *2dly*, Instrument of collation and institution, 1545, to the chaplainry of the Blessed Virgin at Aberlady, upon the collation of the Dean of the Cathedral of Dunkeld, and Vicar General thereof *sede vacante*, addressed *Decano Christianitatis nostræ, ex parte australi aquæ de Forth*; *3dly*, By the rental of the great benefices, given up at the general assumption 1561, the kirk of Bunkle and Preston in the Merse, the kirk and mains of Aberlady, the kirk and mains of Cramond, and the kirk and kirk-lands of Abercorn, make part of the benefice of the bishoprick of Dunkeld; as also, *4thly*, In the old rental of benefices, recorded in Exchequer, are contained the three parishes in question, and the feu and other duties, payable out of them, are at this day paid to the collector of the diocess of Dunkeld; *5thly*, In the old chartulary of Aberbrothock is a list of the parishes in the bishoprick of St Andrew's, in which none of these are contained; *6thly*, In Bagimont's roll these parishes are taxed as in that diocess, and in Habakkuk Bisset's collections, where this roll is inserted, it is said, p. 2180. 'The bishoprick of Dunkeld is divided ' from the Bishop's seat thereof, the five kirks as follows, *viz.* in West Lothian, Abercorn; in East Lothian, Aberlady; and, in the Merse, Bunkle