fice. The law, as to schoolmasters, is not well expressed: it says that they are amenable to the church courts; but it does not say that the sole jurisdiction is in the church courts. The proceedings there are tedious and inextricable. There was no occasion to bring a formal libel. Upon a proper precognition and inquiry, a schoolmaster may be dismissed. The proceedings here were irregular. I would allow the proof to go on here, instead of throwing the cause into the church courts, which is the same thing as throwing it into the sea.

KAIMES. Whether a man is chosen into an office *durante beneplacito*, or for life, depends upon the nature of the office. The decisions have determined, rationally, that he who names a schoolmaster, may turn him out; but then it must be at his peril.

PRESIDENT. I maintain the same opinion here as in the case of *Harvey*: he may be removed from his office, but not arbitrarily. It would be inconvenient and dangerous to bring a schoolmaster before a court of law, either civil or ecclesiastical, in the first instance.

On the 29th June 1769, "The Lords repelled the objections against proceeding; but found it still competent for the pursuer to bring a proof, and the defenders a conjunct proof."

Act. A. Crosbie. *Alt.* Ilay Campbell.

Reporter, Pitfour.

1769. *August* 1. EARL of HYNDFORD, and OTHERS, *against* DAVID DICKSON of Kilbucko.

SEQUESTRATION.

Sequestration of Rents awarded upon the application of the Trustees of the proprietor of the estate, deceased, though opposed by the Heir, who had brought a reduction of the trust-deed.

[*Faculty Collection*, *V.* 14; *Dictionary*, 14,847.]

GARDENSTON. It is not competent for the trustees to obtain a sequestration when they may act if they think fit. Here they may act, but they find they have a troublesome party; and, so, to relieve themselves from trouble, they would put the estate into the hands of the Court.

JUSTICE-CLERK. Dickson obstructs the management, and challenges the trust-right. There is a competition actually depending in Court. A sequestration is never refused, when asked by the person apparently in the right of the subject.

PITFOUR. Lord Gardenston's opinion does not apply; for here there is a proper competition as to possession.

AUCHINLECK. If Dickson sought sequestration, and the others opposed it, there might be difficulty.

ELLIOCK. The trustees have the right; but the apparent heir is actually in possession.

STONEFIELD. In the *Douglas* cause, sequestration was not allowed. A sequestration is an odious thing; it is a license to mismanage an estate.

MONBODDO. It is nothing that the apparent heir has got into possession. The trustees must *age* to turn him out again.

On the 1st August, "The Lords sequestrated."

Act. J. M'Claurin. *Alt. Ipse.*

Diss. Gardenston, Strichen, Stonefield, Monboddo.

1769. *August* 1. DUKE of BUCCLEUGH *against* The OFFICERS of STATE.

PRESCRIPTION.

Prescription of an erroneous Tenure of Lands.

[*Faculty Collection, IV.* p. 321; *Dict.* 10,711.]

HAILES. The charter 1664, was, in all probability, erroneous: a favour, however, was meant and done to the family of Buccleugh, and the family enjoyed the benefit for near a century, and would have done so still, had it not been for a change in the law. The clause, *aliis jus habentibus*, could not have been inserted from any doubt of the Crown's right; for, if Sir John Ker's right had been in the eye of parties, it was plain that the Crown had no right; and, if it was not in the eye of parties, then the Crown's right could not have been doubted. The clause may mean, to the chamberlains of the Crown. It is not improbable that there was some intention of granting the feu-duty to a trustee for the benefit of the family of Buccleugh, and then he would have been the *alius jus habens.* The family had so little idea that the clause meant any one unconnected with the King, that the late Earl of Dalkeith omitted it out of his charter. The pursuer cannot found upon a clause which is left out of the titles of his family.

MONBODDO. If the charter had been granted simply with a *reddendo* to the King and his successors, the Duke of Buccleugh would have been liable in the feu-duty; but the addition of the words, *aliis jus habentibus*, makes a difference, and lays the length of time out of the question. It is the same thing now as if the Duke had said, recently after 1664, that the King had no right, and that Sir John Ker had. And the plea is still competent.

JUSTICE-CLERK. If the *reddendo* had been still the same, and the clause of a feu-duty erroneously thrown in, there might be more difficulty; but here