

S E C T. XV.

Forstalling.—Simoniacal Practices.—Obligation by a Minister not to bring an Augmentation.

No 106.

1594. *December.* L. MERTON *against* TOWN of LAWDER.

VICTUAL once presented to the market, being thereafter housed, the LORDS found, that, if any forstaller bought it betwixt market days, the Magistrates might escheat it, without incurring spuilzie.

Fol. Dic. v. 2. p. 19. Haddington, MS.

* * * See this case, *voce* SPUILZIE.

1759. *February 20.*ROBERT STEVEN *against* STEWART LYELL, JOHN GARDINER, and ROBERT PEIRSON.

No 107.

The friends of a clergyman bound themselves, by a letter, to the heritors of a parish, of which the Crown was patron, to procure a gift of a year's vacant stipend for reparation of the church and manse, provided that, by the interest of these heritors, their friend, the clergyman, should obtain the presentation. The Court found that no action could lie on this obligation, but fined the defenders in L. 10 to the poor.

THE parish of St Vigian's, of which the Crown is patron, became vacant. Two several candidates solicited the heritors, in order to procure, by their interest, a presentation. The friends of one of the candidates offered to the heritors a year's vacant stipend for repairing the kirk, kirk-yard dykes, and manse, provided they would procure the presentation for him. John Gardiner and Robert Peirson, who were the friends of the other candidate, were constrained, by some of the heritors, to agree to the same terms; and gave power to Stewart Lyell to enter into an agreement to that purpose; which he did by a letter in the following terms: "Gentlemen, In consideration of certain favours granted me by you, I hereby oblige myself to procure you a gift to a year's vacant stipend of the parish of St Vigian's, on occasion of the present vacancy, or otherwise to pay you the same, or what part thereof I do not procure you a gift to, out of my own pocket, and that how soon a year's stipend becomes due, after the widow of the last incumbent has got her *ann*, to be applied by you in repairing the church and manse, &c. Addressed, To Mess. Stephen and Strachan, and the other heritors of the parish of St Vigian's.

The presentation was obtained, and an application was made to the presbytery by the heritors to delay the settlement, that some vacant stipend might arise. The presbytery having heard of the transaction, refused this; but though they completed the settlement, they commenced a process against the