

the citation had not been truly given, personally, by a messenger ; which being obvious, and omitted, the decret, after so long a time, cannot thereupon be annulled. The Lords sustained the decret, unless the defender, upon his reduction, would offer positively to prove, by the executions, that the citation was not by a messenger personally.

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1675. *January 29.* SIR JAMES STAMFIELD *against* The EXECUTORS of the DUKE of LENNOX.

SIR James Stamfield and his partners having pursued adjudication of a ship, before the admiral, he did declare the same prize ; whereupon the tenth part of the value was paid to the admiral, and the fifteenth to the king : but thereafter, the Lords having reduced the admiral's decret, and freed the ship ; the privateer having craved deduction of the tenth and fifteenth parts, which he had paid, by virtue of a standing decret for the time,—the Lords allowed the same, reserving action against the admiral for the tenths, and application to the Exchequer for the fifteenths : upon which application the Exchequer did repay, to the stranger, the fifteenths. And now Sir James Stamfield pursues the executors of the Duke of Lennox for the tenths ; who alleged Absolvitor ; because the tenths being the honorary or salary due to the admiral, albeit his decret was reduced, he was not liable for repetition, more than inferior judges are liable for sentence-silver, which is the twentieth part ; especially, seeing there was neither fault nor fraud found in the admiral, whose decret was reduced upon other grounds and considerations than were moved before the admiral : nor could it be pretended that the tenths were paid *causa data et non secuta* ; because the true cause was not the confiscation of the ship, but the sentence of the admiral, which followed. It was answered, That the tenths of prizes are a casualty due to the admiral by the privateer's commissions and custom, when prizes are declared ; but not for the salary of the Judge of Admiralty, whose pains are alike when ships are freed as when they are adjudged ; but it is a part of the profit of the war against enemies, which the king reserves from the private men-of-war, in the same way as the king's own fifteenth part is. The Lords repelled the defence ; and found the defenders liable for repetition of the tenths.

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1675. *February 9.* MR LEWIS DUNLOP, MINISTER of SKEEN, *against* The HERITORS thereof.

*IN anno* 1648 there was a decret of locality of the kirk of Skeen, in which a part of the tack-duty due to the parson of Kinkell (which parsonage is annexed to the Deanery of St Andrew's,) was allocated to the minister, and hath been so possessed till now. This minister pursues the heritors for the local stipend ; a part whereof is the vicarage. They allege, *1mo.* That they are not liable to the minister ; because, by the Act of Restitution of Bishops, they and their deans