

land, there are other roads, called cattle or drove roads, which have received the sanction of the Supreme Court. Porteous of Carnicoupe, and other storemasters in the parishes of Lesmahagow, Douglas, and Muirkirk, claimed right to a drove road through the grounds of Joseph Allan of Castlebroket, and Alexander Morton of Chapel, for carrying their sheep to the market of Kilbride: the defenders interrupted them in this possession, and insisted that they should drive their sheep by the common highway; but, in a process, the Lords first granted them an interdict, *uti possidetis*, and then, upon proof of immemorial possession, found them entitled to the road demanded, and gave judgment accordingly.

1777. August . CAMPBELLS *against* CAMPBELLS.

THE same question occurred in Summer 1777, between certain gentlemen, dealers in cattle, whose grounds lay in the lower or southmost parts of Cowal, against Sir James Campbell and Others, whose grounds lay to the northward, and through which these gentlemen drovers insisted that they had right to certain drove roads, and even to resting and feeding places for their cattle, in bringing them from the Western Isles.

The Lords, in the first place, pronounced an interdict *uti possidetis*, with a reserve as to ground under crop, or inclosed, unless the inclosures were recently made, and stopt up the roads altogether.

The possession went to proof.

SESSION-CLERK.

It is fixed, by two decisions, that the nomination of the Session-clerk, Keeper of the Register of Baptisms and Marriages, is in the Kirk-session, 4th December 1740, *Magistrates of Elgin against The Kirk-Session*; and, 19th November 1761, *Kirk-Session of Dundee against The Magistrates*. Both these cases were in royal burghs, where the Magistrates paid the salaries, and yet, in both, the Lords found, That the Magistrates had no right to interfere in the election. In Edinburgh the case is different; there is only one session-clerk, and he is named by the Magistrates. See also case of Glasgow, 1756, *Harvie*.

See petition, *Kirk-Session of Paisley*, dated 7th February 1763.

In the case of the West Church, *Sir John Nisbet against The Session*, 2d July 1773, adhered to 17th November 1773, the Lords were of opinion, That the election of the session-clerk belonged to the Session. They differed, however, in opinion, chiefly on this ground, that, by the Act 1696, for establishing

parochial schools, the schoolmaster's salary is declared to be by and attour the casualties which formerly belonged to the readers and clerks; so that, by the plan of that Act, the parochial schoolmaster in landward parishes was understood to be reader and session-clerk; See Bank., Vol. I. p. 160; but this was so far controverted as not to infer a necessary conjunction of these offices, unless all parties were pleased, seeing the election of a schoolmaster was by the heritors; that of session-clerk and reader by the Session. The Lords determined as to the right of election of the session-clerk, but they went no further.

They seemed to be of the same opinion as to the office of precentor.

In a case between the late Magistrates of Tweddale *against* The Kirk-Session of Dumfermline, it was discussed, whether the fees of marriages, baptisms, &c. belonged to the precentor or session-clerk. The Lords found that they belonged to the precentor; but this decision, it is informed, went upon specialities. The contrary seems to be the general rule. See papers in the case of Dundee.

See Kilk., p. 324. See 4 *New Coll.*, No. 19.

1779. *January* 13. ANDERSON *against* KIRK-SESSION and MAGISTRATES of KIRKWALL.

A SESSION-CLERK is not understood to be an officer *ad vitam aut culpam*, unless it is so expressed, but removable at pleasure.

A precentor the same, *ibidem*.

1779. *January* 13. JESSON *against* GRAY, Rector of the School of Coupar.

AN usher of a school the same. In this last, it is of the greatest importance that the rector of the school should have the command.

WINTER 1777-8.

PARISH of DUNSYRE.

A SESSION-CLERK is removable at pleasure of the Session, without necessity to assign a reason. So found by Lord Kennet, in the case of the Parish of Dunsyre; and the decision acquiesced in.
