

No 42.

Thereafter, the Lords having considered the proof, repelled the reasons of reduction, and assolized the defenders. Upon a petition, they altered their interlocutor, and reponed the pursuer to his office. But this judgment was reversed in the House of Lords.

Act. *Grosbie.*Alt. *Ilay Campbell.*Reporter, *Pitfour.*

G. F.

Fol. Dic. v. 4. p. 196. Fac. Col. No. 97. p. 351.

 WADDEL *against* INGLIS.

No 43.

FOUND, That the principal Clerk of the Bills has power to grant a deputation to continue during the life of the depute, and that he has no right to exercise the office by himself, independent of a depute.

* * This case is mentioned in another, dated 26th February 1771, Inglis *against* Anstruther, *voce* WARRANDICE.

 1771. July 18. WILLIAM TOSHACK *against* ALEXANDER SMART.

No 44.

In the election of a parochial schoolmaster, heritors, who by their title-deeds are liable in payment of cess and parish burdens, have a title to vote, whether their lands stand separately valued on the cess roll or not. The liferenter has the right of voting in preference to the fiar.

In the election of an assistant schoolmaster for the parish of St Cuthberts, two questions occurred as to the right of voting. The pursuer maintained, that all the heritors whatsoever, who were liable in payment of cess and parish burdens, had a right. The defender, on the other hand, maintained, that the right was competent only to such heritors as were separately valued on the cess-roll. The pursuer also maintained, that the liferenter, whilst the defender affirmed that the fiar, had the preferable right of voting.

THE LORD ORDINARY pronounced an interlocutor, finding, "That every heritor or proprietor of lands or houses in the parish of West Kirk, who, by his title-deeds, is liable in the payment of cess and parish burdens, has a title to vote in the election of a schoolmaster of said parish, whether such heritor's lands stand separately valued in the cess-roll or not; also finds, that in the case of liferenter and fiar, the liferenter has a right to vote, and not the fiar."

In a reclaiming petition, Smart, the defender, *pleaded*;

The present question fell to be decided by the terms and meaning of the act 1696, c. 26. for settling of schools. By the first clause of that statute, it was enacted, that a schoolmaster shall be appointed by the advice of the heritors and minister of the parish; thereafter it was declared, that the heritors should meet and modify a salary, and that they shall stent and lay on the same conform to every heritor's valued rent. By considering the context, the heritors, mentioned in the first and last clauses of the statute, must be individually the same; and as the act expressly provided that the salary was to be proportioned