

his duty. It was further *pleaded*, That if this power was denied the Presbytery, there was reason to fear that few schoolmasters would be settled in the northern parts of the country.

No 28.

Replied for the Heritors, That as an act of Parliament was necessary to establish a *jus devolutum* in the Presbytery in the case of settling a minister, so had there been any such thing intended with respect to a schoolmaster, no doubt the legislature would have taken an opportunity to have expressed it: And as to the inconvenience which might arise from denying such a power to the Presbytery, it was not so great as to allow them to transfer to themselves the right which was competent to the Heritors; for, by application to the judicatories which have the execution of the laws in their hands, they would get the Heritors decerned to provide a schoolmaster in a competent time; and, if they failed, letters of horning would be directed against them for that effect.

“ THE LORDS found, that by the act of Parliament 1696, ordaining a schoolmaster to be settled in every parish with advice of the heritors and minister thereof, the nomination and presentation of the schoolmaster belongs to the Heritors and minister of the parish; but found, that if the Heritors and minister refuse to present, after due certioration by intimation from the pulpit for that effect, that then the Presbytery may proceed and settle the schoolmaster.’

Reporter, *Lord Pancaitland*. Act. *Jo. Dundas*. Alt. *Ja. Graham, sen.* Clerk, *Hall*.
Fol. Dic. v. 4. p. 195. Edgar, p. 25.

1728. July 5. LORD LYON *against* ERSKINE.

No 29.

FOUND that the Lord Lyon has a power of naming his clerks during their lives. See APPENDIX.

Fol. Dic. v. 2. p. 291.

* * * In whom the power of presenting the session clerk and precentor lies, see 4th December 1739, Kirk Session of Linlithgow against the Magistrates, No 48. p. 2304., *voce* CLAUSE. See No 33, *infra*.

1735. July 4. HOME of Slatehouse *against* M'KENZIE and JUSTICE.

No 30.

THE Clerks of Session are liable for writs amissing out of their respective offices, without necessity to prove fraud or negligence against them: For the clerks who have the custody of writs ought to exoner themselves of their trust, by proving the *casus fatalis*. See APPENDIX.

Fol. Dic. v. 2. p. 293.