

the church, the right of nomination of the precentor was found to be thereby conferred upon the town.

No 33.

Fol. Dic. v. 4. p. 195. Kilkerran.

* * * This case is No 9. p. 7916., *voce* KIRK.

1741. *July.* Principal CLERKS of SESSION *against* EXTRACTORS.

THE Clerks of Session, in February 1739, having made a table of regulations to be observed by the Extractors, and the Extractors having refused to comply with these regulations, six of them were dismissed by the Clerks, because of their obstinacy. This produced a remonstrance from the Extractors to the Court, complaining of the regulations as hard upon them, and insisting that they were possessed of a standing office in the Court, that it was their freehold, of which they could not be divested except upon malversation, tried in a court of law. THE COURT first found, "That the Clerks of Session cannot arbitrarily remove their servants, the Extractors, without cause." But the Clerks, in a reclaiming petition, having set furth, that the extracting of acts and decreets is a part of their office; that it is their subscription which gives faith and authority to an extract, and that the Extractor is really and truly their amanuensis; that the Extractors are not even members of the College of Justice; and that, as the Clerks are liable for all the writings produced in Court, of which the Extractor must have the custody, when employed in extracting acts and decreets, it would be extremely hard upon the Clerks, if they could not turn out their servants upon suspicion, when, in most cases, it is impracticable to bring a regular proof of malversing.

"THE COURT altered, and found the Extractors to be servants removeable at pleasure."

Rem. Dec. v. 2. No 20. p. 35.

No 34.

Extractors are servants to the Clerks of Session, removeable at pleasure.

1746. *July 29.* JOHN PRINGLE *against* QUARTERMASTER COOKE.

JOHN PRINGLE writer to the signet, factor on the sequestrated estate of Stanhope, gave in a petition, shewing that James Sinclair, a tenant on the said estate, having been for some time absent from his family, and being suspected of having joined in the Rebellion, a party of St George's dragoons, then lying at Broughton, had seized and carried away his stocking off his farm, and praying the directions of the Court, how he should behave for the security of the creditors.

No 35.

Soldiers may not, at their own hands, intromit with the effects of persons alleged to have been rebels.

No 35.

Such matters fall under the cognizance of the Sheriff.

As the Lords did not think this petition sufficiently special, he afterwards charged the fact on Nathaniel Cooke quartermaster, commanding the party at Broughton, who thereon was ordered to be served with a copy.

Mr Cooke *answered*, that the fact was committed before he was appointed to the command, and that he had before the application replaced the goods upon the farm, and appointed a dragoon to take care of them. He also alleged, it was notorious James Sinclair was in the Rebellion.

“ THE LORDS being of opinion it was only competent to the Sheriff to have any intromission with the effects of rebels, they directed Mr Cooke to remove his guard, giving warning thereof 24 hours before hand to the Sheriff; but as Mr Pringle had rashly accused him, they gave him the expense of his defence.”

Act. *Lockhart.*

Alt. *Miller.*

Clerk, *Kirkpatrick.*

D. Falconer, No. 135. p. 167.

1756. *July 27.*

THOMAS HARVIE *against* MATTHEW BOGLE, and Kirk-Session in Glasgow.

No 36.

The clerk of the general kirk sessions at Glasgow not removable at pleasure, though the office was not conferred on him either during pleasure, or during life.

ANCIENTLY there was but one kirk-session in Glasgow. Upon the encrease of inhabitants this one kirk-session was divided, in the year 1649, into several particular ones, according to the number of churches; after which the particular sessions met sometimes about their particular business; and when the interest of all was to be consulted, they formed themselves into one general kirk-session upon the original plan. These sessions had one clerk chosen by the general kirk-session; this clerk did both their particular and general business, for which he had emoluments to the amount of L. 50 yearly.

From the year 1606, till the year 1646, the clerk was chosen from year to year.

From the year 1646, till the year 1750, the elections of the office of clerk did not express whether it was given for life or during pleasure; neither did use explain the duration of the office: for though in general those who got it enjoyed it while they lived; yet on the other hand, in one instance, a clerk had been turned out for malversation, and in another for incapacity arising from disease.

In the year 1750, Provost Millar, the then clerk, resigned his office into the hands of the kirk-session, on a condition of getting, during his life, L. 40 Sterling a year from his successor in office; and the kirk session chose Thomas Harvie in his place, but without expressing whether the office was given during pleasure, or for life.

A few years after, the kirk-session, without assigning any reason in their act, removed Mr Harvie, and elected Matthew Bogle into the office.

Harvie brought a reduction of this election against the Kirk-session and Bogle.