

## KIRK-SESSION.

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### No. 1. 1740, Dec. 4, 17. MAGISTRATES OF ELGIN *against* THE KIRK-SESSION.

THE town's charter gave them plainly the presentation of the music-master, who was also to be taken bound to officiate as precentor and session-clerk, for which a fund was thereby given them, and uniformly for a century one person officiated in all the three offices, except for I think about a year, when there was, so far as appeared, no music-master, but generally there was an act of the session, admitting him as precentor and their clerk;—and the Lords found, that the town had the right of presenting the reader and precentor; 2dly, That the kirk-session had the right of naming their own clerk; 3dly, That the town has the naming of the beadles. 17th December, Adhered, and refused a bill without answers.

### No. 2. 1752, July 25, Nov. 22. HAMILTON of Westburn *against* THE MINISTER and KIRK-SESSION of Cambuslang.

THIS was a process, at the heritors' instance, against the Kirk-Session, to exhibit their books and accounts of the poor's money, and charging misapplications, which came originally before me, and after abundance of wrangling, the books being at last produced, and the defenders having first on commission, and next in Court, deponed as to certain allegations of the pursuers, the case came before the Court as a concluded cause, wherein certain objections were made to some articles of debursements of the poor's money, particularly that in 1742 there was an article of two guineas for having a field to preach in, and an article to a Constable to keep the peace, and 17 shillings for repairing a dike that the congregation had broken. Answered, That there was so great a resort at that time, that the sacrament had been administered several different times in three months, that the Church could not hold the tenth part of them, and there was no other remedy than to preach in the fields; that the poor, instead of losing, were great gainers by that expedient, in so much, that their stock, from L.500 Scots, that it was before 1742, is now increased to L.3000 Scots. Some of the Lords highly condemned the practice of preaching in the fields, and proposed that we should put a mark of our disapprobation upon it;—but I thought that we had no power either to approve or disapprove of his preaching in the fields, or of his not preaching in the Church, that that was the province only of his superiors in the Church, (and most of the Court agreed with me) and that the only question we could judge of was, whether any injustice had been done to the poor, or any dilapidation of their money? and I thought they could have no reason to complain of a measure by which they gained ten times as much as all these articles, and which they

could not have got without that expense;—but the Lords disallowed all these articles. *Renit. multum* Drummore, Kilkerran, Leven, *et me.* The pursuer also objected to an article stated for purchasing communion-elements. Answered, all the Minister has for communion-elements is 50 merks, which could not furnish all the elements necessary for so great numbers. The Lords repelled this objection, and sustained the article. 3dly, He objected to an annual article for the Presbytery-Clerk, and another for the Session-Clerk. Answered, That by universal custom, that is paid by all the Sessions in Scotland. The Lords found the articles illegal, but because of the custom sustained them.—I doubted if the Session-Clerk was illegal, because he is necessary for the administration of the poor's funds, and I know no salary or emoluments he has *qua* Session-Clerk, if he is not Schoolmaster, or as in country parishes they were commonly both, but may be otherwise. 22d November, Adhered as to the first of the articles, and adhered as to Presbytery-Clerk not to be allowed in time coming; but repelled *simplisiter* the objection to Session-Clerk.

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### LAWBURROWS.

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No. 1. 1734, Nov. 16. COCK *against* HAMILTON, &c.

IN a case betwixt Arthur Cock and George Hamilton, which last raised lawburrows against the former, not only in Hamilton's wife's name, but of a great many others, without their knowledge, intending to execute the letters at the instance of one after another, and had got them executed, first at his wife's instance, then at another woman's instance, which the messenger did without taking their oath;—the Lords found Hamilton, one Lesly, a writer or merchant, and the messenger, all guilty of these oppressive acts;—found them liable conjunctly and severally for the pursuer's expenses, amounting to about L.31 sterling, he deponing upon his account, without restricting to regulations; found the first two liable conjunctly and severally in L.100 Scots of damages, imprisoned all three till Tuesday the 19th, and thereafter till the sums were paid, and suspended the messenger till the 1st of January next.

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### LEGACY.

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No. 1. 1736, Feb. 18. JAMES LAWRIE *against* JANET LEWIS.

THE Lords sustained the gratuitous conveyance in prejudice of the clause of return to the executor.