

1762. *February 26.*

No 37.

EARL of STRATHMORE, &c. *against* The MINISTER and FEUARS of the Parish of Kirriemuir.

By act 26th, Parl. 1696, the schoolmaster in every parish must be appointed by advice of the heritors and minister of the parish. In a question betwixt the Earl of Strathmore, with all the considerable Heritors of the parish on one side, the Minister, with a multitude of small Feuars on the other, concerning the election of a schoolmaster in the parish of Kirriemuir, it was found, that those Feuars only are entitled to vote who pay cess, whether separately, or in a *cumulo* valuation.

Fol. Dic. v. 4. p. 195. Sel. Dec. No 193. p. 257.

No 38.

Notary public allowed to change his surname.

1764. *January 29.*

JOHN MUIR, Supplicant.

JOHN MUIR applied to the Court by petition, setting forth, That his aunt, Mrs Anne Chalmer, had, by a disposition dated the 6th current, conveyed to him certain lands belonging to her, under this express provision, That he should immediately assume and use the surname of Chalmer: That it was thought he could not properly do so without the special authority of the Lords, he being a writer to the signet, an agent, and a notary public. He therefore prayed their Lordships, to authorise him to alter his present surname, and, in place thereof, to assume and use the surname of Chalmer.

"THE LORDS found, that the petitioner may change and alter his surname of Muir to Chalmer; and ordained the petition and deliverance to be inserted in the sederunt-book."

For the Petitioner, *William Wallace.*

J. M.

Fol. Dic. v. 4. p. 196. Fac. Col. No. 130. p. 305.

* * * Lord Kames' report of this case is No 169. p. 7448., *voce* JURISDICTION.

1767. *July 17.*

No 39.

Powers of incorporations in naming their clerks.

JOHN TAYLOR *against* The CONVENERY of the TRADES of Aberdeen.

THE Deacons of the several Trades, the Conveener and Treasurer, with as many more, elected from the several incorporations, as, in all, amount to the number of 33, compose what is called the Convenery Court of Aberdeen, which is entrusted with the sole management of the funds belonging to the trades in

general; and the clerk chosen by the Convenery Court is *virtute officii* clerk to the several incorporations.

In 1724, upon the death of a former clerk, the Convenery elected Mr John Taylor to be their clerk, 'during all the days of his lifetime, and his good service in the said office.'

In 1756, Mr Taylor applied to have his son James conjoined with him in the office, and named to the survivancy of it, which was done by an act of the convenery, proceeding on a narrative of Mr John Taylor's valetudinary state of health, and his desire to have his son joined with him.

James Taylor continued to act as joint-clerk, till December 1765, when he died, and Mr James Watson was proposed as assistant-clerk. Mr Taylor opposed Mr Watson's being named, but the Convenery, 16th January 1766, upon a narrative of Mr Taylor's valetudinary state of health, nominated Mr Watson an assistant-clerk, during Mr Taylor's life, and continuance in office, and under this express declaration, that, in case the said John Taylor shall be able and willing to discharge the duty of the office himself, this present election shall in nowise prejudice him of any of the profits or privileges thereto belonging, and the said James Watson being only to receive such gratification out of the perquisites of the offices, while the said John Taylor lives and continues in the office, as the Convenery shall judge adequate to his labour.'

Mr Watson accepted of the office under these conditions, but represented that, as his profits, during Mr Taylor's life, would be very small, he hoped the Convenery would give him the survivancy of the office for life, after Mr Taylor's death, or resignation; and the Convenery, at same sederunt, elected Mr Watson 'to be clerk to the Convenery and Trades of Aberdeen, during his lifetime, and good service in said office, and gave and granted the hail salary, benefit, and casualties, formerly paid to any clerk in said office, from and after the death of said John Taylor, or his demission of said office.'

Of the members of the Convenery, there were for electing Mr Watson assistant-clerk 24, against it three; two members were absent, and four did not vote. And, in the after step of electing him to the survivancy, there were for it 23, against it one; four declined voting, and five were absent.

Upon the 12th March 1766, Mr Watson appeared in the Convenery Court, and declared, that he was willing to act as clerk, when Mr Taylor could not attend, and that without demanding any part of Mr Taylor's salary, and this offer was recorded in the Convenery books.

Mr Taylor and his adherents brought a process of reduction for setting aside Mr Watson's election, in which Lord Auchinleck, as Ordinary, by interlocutor, 29th November 1766, 'In respect James Watson has declared, by an act, recorded in the Convenery Court books of Aberdeen, that he is to demand no part of the salary or perquisites of the office, during Mr Taylor's life, found Mr Taylor is not hurt by Mr Watson being appointed his assistant; therefore assolvies the defenders from the action, so far as it concludes, that the act of

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election appointing Mr Watson assistant-clerk to Mr Taylor, during his life, should be reduced, and decerns, and appointed both parties to give in memorials on the point, how far the Convenery Court are entitled to name Mr Watson clerk to the Trades, after Mr Taylor's death, or, if they can appoint a clerk, but in the case of the actual vacancy of the office.'

Mr Taylor gave in a representation against that part of the interlocutor, which sustained Mr Watson's election as assistant-clerk, to which answers was made, and memorials given in on the point not determined; and the Lord Ordinary, 'Having considered the representation for the pursuers, and answers, with the mutual memorials, upon the point not determined by the interlocutor, and specially, that it is admitted to have been the custom for above 40 years, for the Convenery Court to have persons fixed for succeeding the clerk in possession, in the event of his death, which may be attended with convenience, as it is an office of trust, and proper to be discharged by a person who has been called upon particularly to make himself acquainted with the duties of it, sustains the defences, and assoilzies.' And to this interlocutor his Lordship adhered.

A reclaiming petition was presented to the Court for Mr Taylor, upon advising of which, with answers, the Lords, 17th July 1767, 'found the Convenery Court had no power to conjoin an assistant with John Taylor, in the office of Clerk to the Trades of Aberdeen, during his life, and, therefore, reduce the act of the Convenery Court called for, in so far as it nominates James Watson assistant-clerk during John Taylor's life and continuing in office, and decern. And, as to the point, how far the Convenery Court have power to name James Watson assistant clerk to the Trades, after John Taylor's death, find it premature to determine that point, until the death or demission of the said John Taylor.'

A reclaiming petition for Mr Watson against this interlocutor was refused without answers.

For Taylor, *Alex. Wight.*

For Watson, *Robert Blair.*

A. E.

Fac. Col. No 58. p. 293.

1769. *January 17.* ANGUS SINCLAIR *against* JAMES HAMILTON, and Others.

No 40.
Malversation
of Justices
of Peace.
Poinding by
an Officer of
Excise, in
virtue of their
decree.

ANGUS SINCLAIR change-keeper in Hunthill, on an information from the Collector and Supervisor of Excise at Glasgow, was tried and fined for retailing foreign spirits without a licence, by Mr Hamilton and other Justices of Peace for the shire of Lanerk, and his effects having been poinded, in virtue of their decret, he brought an action of oppression and damages against the Justices, and against the Officer of Excise and Constable who distrained.