

SESSION, CLERKS OF. See CLERKS OF SESSION.

SHERIFF-CLERK.

THE Sheriff-clerk of Roxburghshire happening to die, the Sheriff, — November 1775, appointed an interim clerk, in order that the business of the court might not be delayed. See the practice as universal, 4 *New Coll.*, p. 169.

1775. *November 23.* Potts, Petitioner.

THE Sheriff of Roxburgh having ordered certain bills for the value of a tenant's stocking, sold *spreto mandato* after a sequestration, to be taken in his clerk's name, by filling up the blank indorsations; he authorised the clerk to raise horning thereupon. It was raised, and denounced accordingly; then, the clerk dying, the Sheriff named an interim successor, whom he authorised to proceed. The Lords past a bill of caption in his name accordingly. They considered this as ministerial, and that the office never died.

SIMONY.

1775. *January 19.* MAXWELL of CARDINES *against* GORDON and the EARL of GALLOWAY.

MR Maxwell of Cardines, as patron of the parish of Anwoth, intending to present Mr Thomson, a friend of his own, settled as a Presbyterian minister in Cumberland, with a very small stipend, was diverted from his purpose by the Earl of Galloway, who intreated him to present to Anwoth a son of Mr Gordon of Balmeg, one of his Lordship's voters in the shire of Wigton; and, to induce him to this, the Earl wrote Mr Maxwell a letter, obliging him to pay to Mr Thomson, until he was provided to a church in Scotland, or was presented to one, £20 *per annum*; and of this obligation the Earl obtained a let-

ter of relief from Mr Gordon of Balmeg, senior. Mr Gordon, junior, was accordingly settled at Anwoth ; and Mr Thomson having granted a power of attorney to Mr Maxwell, Mr Maxwell received from the Earl, by Mr Gordon of Balmeg's hands, the first year's annuity of £20, falling due at Martinmas 1770. And, lastly, in order to free Lord Galloway of all further trouble in the matter, and to make the after-payments regular, it was agreed betwixt Cardines and Balmeg, that Cardines should pay the annuity of Mr Thomson, and, upon producing his discharge, should obtain credit for it out of what he paid to Mr Gordon junior, as stipend of Anwoth ; and a letter to this purpose was wrote by Balmeg to Cardines. To none of these transactions did it appear that Mr Gordon junior was a party.

So far matters were agreed : but differences having occurred with respect to the second year's annuity, Mr Maxwell brought an action against Lord Galloway, founded on his original letter. And the Earl having raised an action of relief against Balmeg, these were conjoined : and the whole being taken to report by Lord Coalston, Ordinary, the Lords pronounced this interlocutor : " Find that the transactions, within mentioned, between the Earl of Galloway and Mr Maxwell of Cardines, and James Gordon of Balmeg, and also the subsequent transaction between the said Mr Maxwell and James Gordon, were all simoniacal pactions entered into *ob turpem causam et contra bonos mores* ; and, therefore, that no action lies on the allegation granted relative thereto ; dismiss this action, assoilyie, and decern : But, in respect of the accession of the said Messrs Maxwell and Gordon to said transaction, they fine and amerciate Mr Maxwell in £80 sterling for the use of the poor, and also Mr Gordon in £60 sterling for the use of the poor ; which sums they decern to be paid to David Ross, clerk to this process, to be disposed of as the Court shall think proper ; and declare that all execution necessary shall pass at Mr Ross's instance for recovery thereof."

Both Mr Maxwell and Mr Gordon reclaimed, but the Lords adhered, mitigating the fine on Mr Gordon to sterling.

See 20th July 1759, *Stephen* against *Lyel*, &c.

SOLICITOR-GENERAL.

THE solicitor is not a *calumniator publicus* ; he cannot therefore concur or authorise a complaint as such, except in his character of advocate-depute.

So the Lords thought, 18th November 1775, *Complainer* against *Kelties* as fraudulent bankrupts. See FRAUDULENT BANKRUPT.
