

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, assoilye, 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.

All proclamations for observance of days of Public Fasting are directed to the Solicitor-General.

When Mr Montgomery presented his commission as sole solicitor, with the whole privileges of his office, as enjoyed by his predecessors, the Lords understood one of them to be, his being allowed to sit and plead within the bar. Therefore he was admitted to do so. Formerly, the solicitors used to get a special letter to that effect. But now, when there is only one solicitor, it is held to be a privilege of his office,—not where there is two.

SPONSIO LUDICRA.

1776. December 17. ROBERT HOPE *against* THOMAS TWEEDIE.

It was alleged that Thomas Tweedie of Oliver, and Robert Hope, tenant at Minziens, had wagered a pipe of port, which of them, on a certain day, would walk first from Beild to Edinburgh. Upon that day Hope came to Edinburgh, Tweedie not having come; and thereby alleging that he had gained the wager, he pursued Tweedie for the pipe of port: the process came before Lord Kennet. The wager was not supposed illegal, or that it fell under the game-laws; but it was denied that any such wager had been entered into seriously; that it was a mere joke entered into over a bottle, so held by the parties themselves, and noways intended to be a subject of action. Lord Kennet having allowed a proof, and the proof being taken, he pronounced this interlocutor, 16th January 1776:—"In respect it is admitted, that in the morning of the day on which it is alleged the race was run, that the pursuer called at the defender's house with boots on, as equipped for riding to Edinburgh, and did not mean to hold the wager, or run or walk to Edinburgh that day, until he thought that the defender insisted on his doing so; and that it appears from the defender's stopping at Mrs Bryden's in Slack, when he was a great way before the pursuer, and calling to the pursuer, as he past, to come there, that the defender was not in earnest; and having also considered the other defences, assoilyies the defender, and decerns, and finds expenses due to neither party." In short, the Ordinary found it truly a *sponsio ludicra*,—a wager in jest, and that nothing serious was intended on either side; therefore he assoilyied: and, on a reclaiming petition and answers, the Lords adhered, 4th December 1776. And this day refused another reclaiming petition, without answers, and adhered.