

1737. *July 1.*

The Ladies MARGARET and DOROTHEA PRIMROSES *against* The COMMISSARY CLERKS of Edinburgh.

No 31.

In a pursuit against the Commissary Clerk, at the instance of the defunct's creditors, for damages sustained by his having received insufficient caution in a testament dative; the LORDS found, that caution must be taken by the Commissaries and their clerks, and that the caution must be sufficient, consideration being had to the circumstances of the parties at the time; and therefore found it relevant against the defenders to make them *subsidiarie* liable, that the cautioner accepted of by them was insufficient. See APPENDIX.

*Fol. Dic. v. 2. p. 293.*

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1738. *February 21.* Mr JOHN CRAWFORD, Supplicant.

No 32.

By act 30th, Parl. 1469, and act 78th, Parl. 1563, notaries must be named and created by the King, and examined and admitted by the Lords; but an abuse having crept in of applying to the Court of Session to be admitted notaries, without any authority from the Crown, this was rectified upon an application of the clerk to the admission of notaries; and in time coming the clerks of Session were discharged to receive in any petition for any person's trial in order to admission as a notary, unless there were presented therewith, and lodged in the clerk's hands, a presentation signed by the clerk to the admission of notaries, and past under his Majesty's cashet. See APPENDIX.

*Fol. Dic. v. 2. p. 293.*

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1740. *December 4.*

MAGISTRATES of ELGIN *against* The MINISTER and KIRK-SESSION.

No 33.

It was questioned between the Magistrates of Elgin and the Minister and Kirk-session, where lay the right of nomination to the offices of beadle, session-clerk, and precentor? Before the Reformation, the beadle was a church-officer, because the care of the fabric, and every thing belonging to it, was then solely in the hands of churchmen. The case is now different, where all churchmen are now stipendiaries only. It was therefore found, that the nomination of the beadle was not in the Minister and his Session, but in the Magistrates. The Kirk-session has a power of naming its own clerk; and they, with the Minister, have the right of nominating a precentor: But in this particular case, where a grant of certain emoluments was made by the Crown to the town of Elgin, for maintaining a music-master, who should be obliged to present in

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.