

No 44.

the right of patronage. Under this act, accordingly, feuars and other heritors had at all times been admitted to vote in the calling and choosing of their ministers, whether they had separate valuations or not; and though the objection of not being valued in the cess-books had been frequently stated, it never had been allowed by the ecclesiastical courts.

The proposition, that those only who paid the salary should have a vote in the election, was not authorised by the statute, which gave the right generally to the heritors without distinction. Still less was there any ground to maintain, that being entered in the cess rolls was a necessary qualification. All that was provided was, that an heritor, before he could be subjected to payment of schoolmaster's salary, should have a valued rent; but if this valued rent appeared from his title deeds or otherwise, and if the statute did not expressly enact that it should appear from the cess-rolls only, declaring also the right of voting to depend on that alone, no reason could be assigned why the heritor should be deprived of a natural and acknowledged privilege.

Upon the second question, as to the fiar and liferenter, Smart, the defender, *pleaded*;

The fiar was truly the heritable proprietor or heritor, and was acknowledged as such by the statute. Had the statute meant that liferenters should have the right of voting, it would in explicit terms have conferred it, when it imposed upon them the burden of the salary; but as, instead of doing so, it styled the fiar the heritor, in contradistinction to the liferenter; and as it was the heritor alone who was authorised to elect, it of course followed that the liferenter could have no vote.

The pursuer *answered*;

As the liferenter was burdened with payment of the salary, it was most reasonable that he should enjoy the privilege of voting in the election. This was confirmed by universal practice, the liferenter being in this as in every other case, to all intents and purposes the heritor while he lived.

At giving judgment, July 18. 1771, several of the Judges were of opinion, that an heritor, who had a valued rent, was entitled to vote, whether he paid cess or not. The majority, however, thought it was best to adhere *simpliciter* to the Lord Ordinary's interlocutor.

Lord Ordinary, *Monbaddo*. For Toshack, *A. Belcher*. For Smart, *Maclaurin*.
Clerk, *Gibson*.

R. H.

Fac. Col. No. 96. p. 286.

KEMPT *against* MAGISTRATES OF IRVINE.

No 45.

The Lords found, that where a person, in consequence of advertisement in the newspapers, had offered himself as candidate for the office of teacher of the

English school at Irvine, and after trial of his qualifications had been admitted to the office, and continued to serve in it for several years, though originally elected only for one year, he could not be removed arbitrarily, or without just cause, such as incapacity, immorality, or malversation.—See APPENDIX.

No 45.

Fol. Dic. v. 4. p. 196. T. MS.

*** The same found, 1777, Schoolmaster of Dunsyre; see APPENDIX.

1779. January 13. ANDERSON *against* KIRK-SESSION of KIRKWALL.

No 46.

THE Kirk-Session of Kirkwall appointed Anderson clerk and precentor in place of Redford, who had left the country, but whom afterwards, on his return, they reinstated in his office. In a reduction brought by Anderson of this procedure, the LORDS found, that these offices were held only during pleasure, and assolizied from the reduction.

Fol. Dic. v. 4. p. 195. Fac. Col.

*** This case is No 6. p. 8017. *voce* KIRK-SESSION.

1781. June 15. ORR, Petitioner.

No 47.

AN advocate before the Court of Session may be a notary-public.

Fol. Dic. v. 4. p. 195. Fac. Col.

*** This case is No 29. p. 360. *voce* ADVOCATE.

1783. February 13. ROBERT MACAULAY and Others *against* JOHN ANGUS.

No 48.

ANGUS, with a view of practising in the city of Glasgow, made application to the Court for admission into the office of a notary-public. His moral character and his abilities having been certified in the usual manner, he was in consequence of a remit from their Lordships, examined by two writers to the signet, by whom his proficiency was approved and reported. But when the Court came to give their sanction to this report, objections to his admissibility were urged by Macaulay, and a number of other members of the society of writers in Glas-

Circumstances sufficient to disqualify a candidate for the office of a notary-public.