

No 1. given by them should fall under the direction of the ecclesiastical officers of a church, of which the donors are not members ; and, by the certificates produced, it is plain the contributors intended the suspenders should have the management thereof, who, it is a mistake to say, were members of the established church, as they had, before that meeting, by a writing under their hand, separated from the church of Scotland, and joined themselves to the Seceders.

THE LORDS sustained the reason of suspension.

*C. Home, No 119. p. 190.*

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1756. March 9. MR THOMAS HARVEY *against* MATTHEW BOGLE.

No 2.  
A session clerk may be removed summarily, at the discretion of the session, but not arbitrarily.

GLASGOW originally was but one parish ; it now consists of six. Each parish has a session of its own ; and there is a general session composed of the whole, which governs ecclesiastical matters that relate to the whole.

There is but one clerk both for the general and particular sessions. This clerk, before the 1646, was elected annually. Mr Lorn was so elected ; but, as the office is of considerable profit, requiring skill and integrity, and employing a man's whole time, the inconvenience of annual elections was discovered, and the first step to an alteration was by tacitly continuing Mr Lorn in the office, without re-election. The next step was to elect without naming any time. This was the case of John Spreul, who in the 1695, being struck with a palsy, was discarded as unfit to officiate. Mr Miller was elected in the same terms, who, upon a resignation, made way for Mr Harvey. The general sessions, judging they had a power to remove their clerk at pleasure, turned out Mr Harvey without any cause assigned, and elected Mr Bogle.

This occasioned a process of declarator and reduction, at Harvey's instance, against Bogle and the general session. The point chiefly disputed was, Whether the session-clerk of Glasgow is a servant removable at will, or whether he has a liferent office of which he cannot be deprived, except upon malversation ? It appeared to the Court, that the pursuer carried the point too high, and farther than was necessary to support his process. This is certainly an office of too great importance to be annual or precarious ; but there is no reason that it should be *ad vitam aut culpam*. The rule established by the Court, 18th January 1710, Magistrates of Montrose *contra* their Schoolmaster, *voce* PUBLIC OFFICER, was thought applicable here, that the schoolmaster could not be removed arbitrarily, but might be removed for any just or reasonable cause.

“ THE LORDS reduced Bogle's election, and declared in favour of Harvey.”

The particular circumstances of this case had great weight with the Court. The session-clerk of Glasgow was originally chosen yearly ; this yearly election was found inconvenient, and the clerk was continued without a new election. This introduced a change in the form of election. In place of being annual,

the election was made without relation to time. The question is, Whether this change was intended to make the officer more dependent or less dependent? If the officer so elected can be turned out at pleasure, he is more dependent than formerly, when he was secure for a year at least. This would be a most impolitic regulation. A lucrative office, depending on the arbitrary will of a body consisting of above 100 members, would occasion continual factions and disturbances, one party stealing a march upon another to bring in their man, a game that may be played every sederunt. We must suppose, then, according to the rules of good policy, that this change in the form of election was intended to make the officer less dependent; not, indeed, for life, but only that he could not be turned out without some good reason or cause. This, at the same time, does not make the officer so independent as that he cannot be removed without the authority of a proper court upon a process commenced for that end. The officer may be turned out *via facti*, and at short hand; but, if he complain of injustice, and, in a process, insist to be reponed, the session must be able to show that they did not act whimsically or arbitrarily, but upon rational motives and a just cause.—See PUBLIC OFFICER.

No 2.

*Fol. Dic. v. 3. p. 372. Sel. Dec. No 107. p. 152.*

1756. August 10.

ANDREW TURNBULL Minister, and the KIRK SESSION of KIPPAN,  
against JOHN M'CLAWS and Others.

THE kirk-session of Kippan, a landward parish, had been in use, from time immemorial, of keeping and letting for hire mort-cloths for the funerals of persons dying in the parish, and of applying for the use of the poor such sums as arose from the hire of these mort-cloths.

A congregation of the Seceders, within the bounds of this parish, bought mort-cloths, and let them out to hire among those of their own persuasion.

The kirk-session brought a process of damages against them, for using these mort-cloths, and thereby diminishing the produce of the mort-cloths of the kirk-session.

“THE LORDS found, That the kirk session have the sole right of keeping and letting for hire, for the use of the poor, mort-cloths within the bounds of the parish, and that the defenders have no right to keep mort-cloths, and give the same out to hire, or even to lend the same gratuitously for burying any of the dead within the said parish, with certification that they shall be accountable to the kirk session for the ordinary dues of their mort-cloths in the like cases.”

N. B. In a case in 1718, betwixt the Kirk Session and the Trades of Kilwinning, the LORDS had found, “That the kirk session of Kilwinning had the sole power of lending out of mort-cloths upon hire, for the benefit of the poor; and

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No 3.  
The kirk session has the sole right of keeping mort-cloths, and letting them out for hire within the parish.