

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.

No 3: that the poor of the said parish have right to the money arising from lending of mort-cloths upon hire within the said parish ; and sicklike, that the kirk session there hath the sole right to administrate the same, but prejudice to private persons to make use of their own mort-cloths belonging to themselves ; and discerned the defenders to forbear using mort-cloths of their own, or lending out the same for money, or otherwise, to others through the said parish, or any part thereof, in time coming ; but prejudice always to private persons to make use of their own mort-cloths belonging to themselves, as said is."

The decision does not appear in any printed collection, but the evidence of it was produced to the Court in the present question.

Act, *Geo. Wallace.*

Alt. *Lockhart.*

J. D.

Fol. Dic. v. 3. p. 373. Fac. Col. No 215. p. 315.

1765. June 26.

ANDREW BEVERIDGE, Precentor and Session-clerk of Dunfermline,
against JAMES BAYNE and Others.

No 4.

The kirk session of Dunfermline ordained, That whosoever in that parish should give up their names to be proclaimed for marriage, should give half a dollar to the poor before their proclamation. An action was brought against certain persons, who refused to pay this sum ; but it appearing from a proof, that the use of payment had not been general, the Court assoilzied the defenders.

The defenders in this case, who were sece-

THE kirk session of Dunfermline, by an act 23d January 1681, ordained, ' That whosoever in that parish should give up their names to be proclaimed for marriage, should give half a dollar to the poor before their proclamation.' This act was renewed 8th November 1719, upon a narrative, that the custom of paying the above sum was much worn out.

The pursuer, authorised by the kirk session, brought an action before the Sheriff, against the defenders, all dissenters of different denominations, and mostly seceders, for payment of this sum, founding his claim upon the acts of the kirk session and use of payment. As to the last, the Sheriff allowed a proof to both parties. The pursuer limited his to the period from 1718 to 1738, *i. e.* from the date of the last act of the kirk session to the secession. It appeared from the proof, that the use of payment had been pretty general, though not universal ; that the kirk session, on account of the reluctance of the parishioners, had resolved to accept what they would voluntarily give ; that numbers had paid less than the half dollar, and many, though people of substance, had paid nothing.

The Sheriff having given judgment for the pursuer, the cause was brought into this Court by advocacy, and, after a hearing, was taken to report.

The pursuer contended, That, by common and universal custom over Scotland, small sums, in some parishes more, in some less, were paid to the kirk session, for behoof of the poor, on occasion of proclamation of banns for marriage ; that the exaction of such sums had been authorized by a decree of this Court, in a case between the kirk session and seceders in the parish of Falkirk ;