

1760. February 23. MR. ADAM ROSE, Petitioner.

A petition was presented to the Court by Mr. Adam Rose, Minister of the Gospel at Dingwall, setting forth, That, in April 1759, he was examined as a witness at Dingwall, in the complaint at the instance of Mackenzie of Brae, against Colonel Scot and others; and complaining, That after he had emitted his deposition, Sir William Dunbar of Hempriggs used many injurious and indecent expressions with regard to his oath, charging him in pretty direct terms with perjury. And he prayed, That the complaint might be served, and Sir William found liable in damages and expenses.

The Lords found this summary complaint not competent, in regard the principal cause was determined, and out of Court.

Fol. Dic. v. 4. p. 310. Fac. Coll. No. 216. p. 392.

No. 16.

After decree
no summary
complaint
competent.

1764. July 24.

SIR ROBERT ANSTRUTHER, Baronet, and ROBERT WADDEL, conjunct Principal Clerks to the Bills, *against* CHARLES INGLIS, Depute-Clerk to the Bills.

Sir Robert Anstruther and Mr. Waddel preferred a petition to the Court, which prayed their Lordships to take the case under their immediate consideration, and to appoint the said Charles Inglis (a member of Court) to put in his answers to the petition against such a day as their Lordships should think proper; and, upon the merits of the question itself, to find, That the petitioners were entitled to discharge the duties of their office personally, and that Mr. Inglis, as Depute-Clerk, is only entitled to be assistant and subservient to them in such branches of the business of that office as they should please to commit to him, excepting in the case of their absence; and, as a consequence of the premises, that the petitioners are entitled to take into their own custody and keeping, in an office which they had prepared for that purpose, the whole books, records, bonds of cautionry, consigned money, &c.; and therefore to ordain Mr. Inglis to surrender and deliver up these to the petitioners on inventory, or otherwise, as their Lordships should judge proper.

This petition having been ordained to be answered, Mr. Inglis did accordingly put in answers, asserting, That the view of the petitioners, in this application, was to deprive him of several fees which had been understood from time immemorial to be the proper fees of the Depute-Clerk; and insisting that he had right to officiate in the same manner, and to receive the same fees which he and his predecessors were in use to do, submitting, at the same time, to the Court, that a question of this kind was more properly the subject of a declaratory action than of a summary application.

No. 17.

A summary
application
involving to
the nature of
the office of
Clerk of the
Bills found
not compe-
tent.

No. 17. "The Lords found the petition not competent; and therefore dismissed the same; reserving to the petitioners to insist against the respondent in a declarator or reduction; and reserving to the respondent his defences against the same, as accords."

Act. Lockhart.

Alt. M^cQueen.

Fol. Dic. v. 4. p. 310. Fac. Coll. No. 142. p. 332.

1764. August 3.

THOMAS FRAZER of Gortuleg, against JOHN SPOTTISWOOD and Others, TRUSTEES of the Deceased THOMAS FRAZER, Writer in Edinburgh.

No. 18.

A summary application to have words in a deed on record declared injurious, found incompetent.

Thomas Frazer of Gortuleg applied to the Court by petition, setting forth, That, at opening the repositories of Thomas Frazer, who had died some weeks before, there was found a settlement executed by him in 1758, by which he vests his effects, amounting to about £.2500 Sterling, for the uses therein mentioned, in certain persons as trustees, or, failing of them by death or non-acceptance, to the Magistrates of Edinburgh, and their successors in office.

That this settlement was extremely whimsical in many particulars, and most injurious to the petitioner; for, after mortifying £.800 Sterling, the interest whereof to be applied towards the education of two boys of the name of Frazer, to law, physic, or divinity, at the College of Edinburgh, upon a competition among four of that name, the following clause is adjected: "Secluding always from the fore-said competition, and from any benefit arising from this deed, the children and descendants of Thomas Frazer of Gortuleg, in Stratherick; and Hugh Frazer, now of Dunballoch, in the Aird; Simeon and Levi, brethren in iniquity." The cause of this seclusion is known to the world, and, more particularly, to the distressed family of Lovat, and likewise to the family of Culloden.

That the deed had been recorded in the books of Session, and extracts taken out by different people interested in it.

That the insinuations in the above clause were equally malicious and groundless, as would appear from a certificate by two of Thomas Frazer's trustees, and a variety of letters and papers annexed, from which the petitioner's friendship and fidelity to the family of Lovat was clearly evinced.

That death had secured the author of the calumny from being brought to justice; and it was doubted, whether action lay at common law against his heirs for reparation; but, as the writing had been recorded in the books of Session, which are immediately under the eye and direction of the Court, the petitioner had been advised to lay the case in this manner before your Lordships.

That the petitioner did not insist, that any material clause in the deed should be altered or expunged; or that the seclusion of him and his from the benefit of the mortification should be set aside, but only that the injurious expressions should be delete, or some other remedy granted. The petitioner therefore prayed their