

schoolmaster, precentor, and session clerk, were united in one person. Both before and since the act, the offices of schoolmaster, session-clerk, and precentor, often were united in one person, and not without reason, as the dues of all the offices in many parishes are so inconsiderable as not to afford more than a sufficient maintenance for one person; but in many parishes where that is not the case, all these offices have been distinct; and it never was, nor could be the meaning of the Legislature, to enact, that in every case, they should be accumulated in one person. The act 1696 provides, the parochial schoolmaster shall have 200 merks of salary; and it was foreseen that the parochial schoolmaster would often be chosen session-clerk and precentor. The above clause respecting the salary was inserted to secure the schoolmaster in his 200 merks, over and above the dues he would be entitled to as precentor and session-clerk, and to prevent the imputation of these dues in payment of his salary as schoolmaster. But it was not, and could not be the meaning of the Legislature, by that act, to deprive all the session-clerks and precentors, then existing, of their offices, and vest them in the parochial schoolmasters, to be chosen in consequence of this act, or to enact, that, in all time coming, in every parish, whatever the circumstances might be, the schoolmaster should at the same time be precentor and session-clerk. And, *3tio*, As their minutes, appointing an election, related only to a session-clerk, the heritors had no right to interfere.

THE LORD ORDINARY 'repelled the reasons of suspension, reserving to all ' concerned a right to the perquisites of the office, as accords.'

And, upon advising a reclaiming petition from the Heritors, which likewise prayed to be allowed to repeat, in this process, a declarator of their right, and answers thereto, the COURT 'adhered to the ORDINARY'S interlocutor, and refused the petition.'

Act. *Ilay Campbell, Alex. Murray.* Alt. *M'Laurin.* Clerk, *Ross.*

Fol. Dic. v. 3. p. 373. Fac. Col. No 91. p. 228.

1779. *January 13.*

JOHN ANDERSON *against* the KIRK SESSION of Kirkwall and JOHN REDFORD:

JOHN ANDERSON was appointed by the kirk session of Kirkwall their clerk and precentor, in place of John Redford, who had removed to another part of the country. Redford having soon after returned, the kirk session dismissed Anderson from the offices of clerk and precentor, and reinstated Redford. Anderson brought a reduction of Redford's appointment, and declarator of his own right to hold both offices, in which he called the Kirk Session and Redford.

Pleaded for the pursuer; A person holding a public office is presumed to hold it *ad vitam aut culpam*, if there is nothing in his commission to the contrary, and usage has not established a different rule. On this ground, it has been

No 6.

Precentor and session-clerk removeable at the pleasure of the kirk session.

No 6. found, that a schoolmaster in a royal burgh is not removeable arbitrarily, at the pleasure of the magistrates, though his act of admission did not bear during life; Magistrates of Montrose against Strahan, 1710, *voce* PUBLIC OFFICER; Fowlis, 10th Nov. 1747, No 2. p. 6581. The offices of precentor and session-clerk are public offices; they are part of the ecclesiastical polity, and the office of Session-clerk is likewise of importance to the community, as furnishing the record of marriage and baptisms.

Answered for the defenders; A commission for holding an office, whether public or private, must, like every other mandate, be considered as revocable at pleasure, unless the contrary be expressed. In some cases, public offices are held *ad vitam aut culpam*, either from the long usage, or the express terms of their commission. Many others are held during pleasure only; but the offices of session-clerk and precentor are not to be considered as public offices. That of schoolmaster is established by statute, and a fund appointed for the support of those who hold it; session-clerks and precentors are neither established nor provided for by law. A kirk session may have a clerk or not as they incline; and he is merely the private servant of the session.

THE COURT found, 'That the pursuer held the offices of precentor and session-clerk of Kirkwall during pleasure, and therefore assoilzied the defenders 'from the reduction.' See PUBLIC OFFICER.

Lord Ordinary, *Braxfield*. Act, *Stewart*. Alt. *Honeyman*. Clerk, *Menzies*.
Fol. Dic. v. 3. p. 372. Fac. Col. No 52. p. 93.

1783. February 18.

The KIRK SESSION of Dumfries *against* The INCORPORATION of SQUAREMEN there.

No 7. THE Incorporation of Squarmen in the burgh of Dumfries having been in use, from a very remote period, to let out mort-cloths for hire, the kirk session of the parish, in the year 1781, instituted an action for having it found, that they had the sole and exclusive right of doing so. In support of this action they referred to the following decisions, Turnbull and Kirk Session of Kippan *contra* McClaws, No 3. p. 8013.; and Kirk Session of Killwinning *contra* Trades, *ib. cit.*

Observed on the Bench; The right which the kirk sessions in Scotland enjoy, of letting out mort-cloths for hire, when followed with immemorial possession, has been found to establish an exclusive right to the emoluments arising from this sort of traffic. Here, however, the defenders having been, beyond the years of prescription, in the practice of letting out mort-cloths, there is no foundation for the present action.

THE LORDS 'assoilzied the defenders, in respect of the long possession had 'by them.'

Lord Reporter, *Stonfield*. Act, *Crosbie*. Alt. *Elphinston*. Clerk, *Robertson*.
C. Fol. Dic. v. 3. p. 373. Fac. Col. No 94. p. 146.

See APPENDIX.