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

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-

No 48. gow. These were founded on the following circumstances in his situation and character, some of which became afterwards the subject of proof.

About the age of twenty, Angus entered into the service of a tobacconist in Glasgow. After the death of his master, whose widow he had married, he carried on the business on his own account for some time, and then turned bankrupt. No dishonesty, however, appeared in his conduct; the composition which he paid was 10s. in the pound, besides granting his bills for a farther payment of 2s. 6d. Having again begun business as before, he became a second time insolvent, an event which seemed to be in part owing to his resources having been unequal to the payment of those bills.

Angus now, when about twenty seven years of age, placed himself as an apprentice with a writer in Glasgow, and continued to serve in that capacity until the expiration of the term agreed on. His wife in the mean time took up the business of a grocer, and in this undertaking likewise a bankruptcy happened. He, however, professing himself to have no concern with his wife's transactions, still followed the occupation of a writer, and after a few years, made the application in question for being admitted a notary-public.

The grounds of the objections pleaded against Angus, from those facts, were four in number; 1*mo*, His repeated bankruptcies; 2*do*, His character being suspicious; 3*tio*, His having so long followed a different profession; 4*to*, His wanting the knowledge requisite for discharging the office he was in suit of.

It seemed, however, to be admitted, that no one of these particulars, apart from the rest, could furnish an objection sufficient to disqualify Angus for becoming a notary-public. But it was urged, that the sum of the whole was of such magnitude, as to present an insurmountable obstacle to his admission into an office of such considerable public trust, and which required so great an extent of qualification, both in point of morals, and of professional skill. To those objections Angus

Answered, 1*mo*, His bankruptcies were not attended with dishonesty; 2*do*, Of his bad character there exists not any proof; 3*tio*, His having, prior to the age of twenty-seven, been engaged in a mercantile employment, is not a relevant ground of exception; 4*to*, That he possessed a competent share of the requisite knowledge has been found on regular examination, and has been certified in due form.

It was added, that the notion of completing in the above manner a sum-total of objections, owned to be severally insufficient, would lead to very loose and arbitrary, and even to whimsical modes of judging concerning cases like the present; and that the concession itself, on which it proceeded, seemed fatal to the pleas of the objectors.

The Court, after a hearing in presence, were of opinion, that the whole circumstances of the case were of such a nature as to shew Angus to be an unfit person for being intrusted with the office of a notary-public.

THE LORDS therefore refused to authorise his admission. No 48.

Act. *Ilay Campbell, Cullen, Arch. Campell.* Alt. *Hen. Erskine, W. Stuart.*

N. B. When the cause was about to be decided, the objectors produced a paper said to have been given in to an inferior court, with this title, Defences for Jane Seymour (Angus's wife) and Company, and likewise certain shop-accounts of hers, bearing the same addition of Company to her name; an appellation, as they contended, which indicated either an equivocal conduct on the part of Angus, in his thus seeming to avow, whilst on other occasions he disclaimed connection with his wife's business; or else a design to mislead his creditors into a belief that the shop-goods, as being a company concern, were, so far, not attachable for his debts.

S. *Fol. Dic. v.* 4. *p.* 195. *Fac. Col. No* 92. *p.* 142.

1785. *February* 23.

DAVID SIBBALD *against* HENRY DAVID INGLIS.

No 49.
How far the Clerk of the Bills is liable for the insufficiency of a cautioner in a suspension?

SIBBALD pursued Mr Inglis, Depute-clerk of the Bills, in an action of damages, for his having received an insolvent cautioner in a process of suspension of a charge at the pursuer's instance. The charger's agent did not appear in the bill-chamber on the occasion; and the clerk trusted to the representation of the cautioner's sufficiency, given by the doer for the suspender, and aided, as he supposed, by the circumstances of the smallness of the debt, it being under L. 7, and the cautioner's bearing the designation of "late deacon of his trade in the town of Cupar."

Pleaded for the defender; The Clerk of the Bills must, in general, be supposed to know nothing personally of the cautioners offered to him; and from the distance of their residence, he will most frequently, too, be prevented from obtaining information concerning them. To interpret literally the act of sederunt of 18th February 1686, so as to render him liable in damages, not only for receiving an insufficient cautioner, but for refusing one that eventually may be found to have been solvent, would be in effect to subject him to the hazard of becoming responsible for the debt, in almost every instance in which the charger or his agent did not authorise him to accept the caution tendered. It cannot be the purpose of the law to reduce any public officer to so hard a situation; and accordingly it has been found, that if the Clerk of the Bills be free of any malversation or culpable negligence, he is not answerable for the solvency of cautioners; 1st March 1769, Stannars *contra* Inglis, No 41. p. 13131.

Answered; The uniform opinion of lawyers, and a train of decisions of the Court, give countenance to a literal construction of the enactment in question; Stair, p. 775. et seq.; Bankton, vol. 1. p. 459.; Erskine, p. 475.; Fountain-