

K I R K S E S S I O N .

1739. June 19. HENRY HILL, &c. *against* ARCHIBALD THOMSON, &c.

THE sum of L. 51 Scots having been collected at a fast observed by the Seceders, the kirk session of St Ninians (in which parish the collection was made) brought an action before the Sheriff of Stirling against the persons who had the custody of the money, to pay it to them; *alleging*, That, as the minister who preached at the meeting is a minister of the established church, and in possession of a legal stipend in the next parish, and the elders who collected the same are elders of the parish itself where the meeting was held, these circumstances brought the collection under the general denomination of ecclesiastical goods, put under the direction of the eldership or presbytery, to be by them uncorruptedly distributed, in terms of the 116th act of Parliament, *anno* 1592. The Sheriff decerned the defenders to pay the money; which they suspended, on this ground, That the will of the donors, expressed or implied, in all voluntary contributions, ought to be the rule for the distribution of money so collected. When any thing is given in charity at the church, it is given *ipso facto* unto the kirk-box, and so falls under the administration of the kirk session; and when, with consent, and at the desire of the legal church officers within a parish, divine service is performed, the charity collected by them there falls under their administration, as well as that collected at the church; because it is presumed, that the donors know that the persons who receive their collections do it only by virtue of their being church officers; therefore, by giving their contributions to them, they declare their intention that it should enter the kirk-box, and consequently fall under the management of the kirk session. But the case is quite different, when people of a separate church from the one established by law, meet for the performance of divine service in a parish, and there make contributions for charitable uses; for here, if it is not so expressed, sure there is nothing that can imply it to be the will of the donors, that the money

No 1.

Money voluntarily collected at a meeting-house of Seceders, does not fall under the administration of the kirk session within whose bounds it was gathered.

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.

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,