

CLERK OF SESSION.

1755. *January 7.*

MRS JEAN FINLAYSON, *against* MESSRS MURRAY and FORBES, two of the
Principal Clerks of Session.

ALEXANDER FINLAYSON, one of the Depute Clerks of Session, died in March 1754, two days after the rising of the Session; and the emoluments which would have belonged to him, had he been alive, from the day of his death to the admission of his successor, were intromitted with by Messrs Murray and Forbes, the Principal Clerks in that office in which Mr Finlayson wrote.

Mrs Jean Finlayson, daughter and executor of Mr Finlayson, applied by petition to the Court of Session; setting forth, that these emoluments belonged to her as executor to Mr Finlayson; for, as he had done the duty of Depute-Clerk during the Session, his executor ought to reap the fruits of that labour, namely, the dues paid for extracts of acts and decreets during the following vacation; and that, upon the death of Mr Cunningham in 1705, and of Mr Brown in 1750, his executors received the emoluments of the office till the admission of their successors; and therefore prayed, That the LORDS might ordain the emoluments from Mr Finlayson's death to the admission of his successor to be paid to her.

Answered for Messrs Murray and Forbes; That the emoluments of the office arise, and are due, *de die in diem*; and therefore the right of the defunct determines immediately on his death: It may thereby sometimes happen, that one does not receive the dues of extracts in these processes, in which he acted as Clerk; but for this he had the chance of receiving, at his entry, the dues of extracts, in processes where he did not labour; and, whatever one may gain or lose by such chances, there must be a general rule observed that may apply to all cases; and it has been the constant rule, That when a Principal or Depute Clerk dies, his executors get none of the dues paid for extracts, or other things, after his death, but these belong to the Principal Clerk or Clerks of the office

No 1.

The emoluments of the office of depute-clerk of Session are due *de die in diem*, and determine immediately upon his death; therefore, his executors have no right to what dues or fees may be paid during the interval between his death and the appointment of a successor in office.

No 1. to which the deceased Clerk belonged ; which contingent profits are the only fund the Principal Clerks have for defraying certain extraordinary expences attending the office ; and although, in the instances condescended on by the petitioner, the dues were given to the executors of the deceased Clerks, yet this was favour, not right.

‘ THE LORDS refused the desire of the petition.’

Act. Thomas Miller.

Alt. D. Dalrymple.

Clerk, Justice.

Fol. Dic. v. 3. p. 133. Fac. Col. No 122. p. 182.

* * * See act of sederunt, 2d July 1709, p. 232. of acts of sederunt, edition 1790. See act of sederunt, 20th November 1711, § 7. p. 244. of acts of sederunt.