

other place but the Lower Parliament-house could be found, where they could be lodged with safety, and of it the Lord Register's private assistants were in possession.

No 50.

*Observed on the Bench;* The word "deputes" is obviously applied in the act 1617 in two different senses, both to persons who were to hold offices which the Lord Register could only exercise by deputation, and to those which, if he had chosen, he might have performed in person. The reservation introduced in his commission relates entirely to the former; the latter cannot be separated from his office: And both the marking of the books of all the registers, and the ultimate custody of them, are of this nature.

The Court, accordingly, with respect to the action at Mr Stuart's instance, unanimously "adhered" to the interlocutor of the Lord Ordinary, assoilzieing the Lord Register from it; and, in the action at his Lordship's instance, they, with only one dissenting voice, "Found, That Lord Frederick Campbell has an inherent right, in virtue of his office of Lord Clerk Register of Scotland, to mark, by himself, or the deputes named by him for that purpose, the books kept in the general register of sasines, and also in the particular register for the counties of Edinburgh, Haddington, and Linlithgow, as well as the books of the particular registers in the other counties of Scotland; and also to receive and keep, when filled up, the books of all those respective registers, either by himself in person, or by deputies named by him, as aforesaid."

Lord Ordinary, *Dreghorn.*

For Lord F. Campbell, *Dean of Faculty Erskine,*

*Montgomery, A. Campbell, junior.*

For Mr Stuart, *Lord Advocate Dundas,*

*Solicitor-General Blair, Sir W. Miller.*

*Clerk, Home.*

R. D.

*Fol. Dic. v. 4. p. 194. Fac. Col. No 165. p. 382.*

1797. December 5.

THOMAS COUTTS and his ATTORNEY *against* SIR ROBERT ANSTRUTHER and THOMAS SMITH, Principal Clerks to the Bills.

THOMAS COUTTS and his Attorney obtained decree against John Tannahill, for L. 303, 19s.; and a bill of suspension having been presented, the chargers consented to its being passed, on caution. Four cautioners were offered, whom the minister of the parish, where three of them resided, certified in writing to be "to the best of his knowledge in good circumstances, and able to pay" the sum charged for.

The caution was immediately accepted by the Depute clerk of the Bills, without giving any intimation to the chargers.

The letters were found orderly proceeded, to the extent of L. 283, 19s.; and ultimate diligence having been done against the suspender and his cautioners,

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No 51.

The Clerks to the Bills found not liable in damages, for accepting insufficient cautioners, the minister of the parish where they resided having previously certified in writing, that,

## No 51.

to the best of his knowledge, they were able to pay the debt.

it turned out that the latter were unable to pay the debt, and had been so when the caution was accepted. The chargers then brought an action for the debt against Sir Robert Anstruther and Thomas Smith, the Principal Clerks to the Bills, and

*Pleaded*, It is the duty of the Clerks to the Bills, where appearance is made for the charger, either to intimate to his agent, the caution found, or take attesters in terms of the act of sederunt, 27th December 1709, especially in cases like the present, where the chargers consented that the bill should be passed on caution. If the pursuers had received such notice, or if the Depute-clerk had delayed, for a short time, accepting the caution, they would have established, which they still offer to do, that the cautioners were not, as required by the act of sederunt, 18th February 1680, reputed sufficient for the sum charged for when their bond was accepted. See Stair, 2d December 1680, Alstoun against Riddel, *voce* REPARATION; 23d February 1785, Sibbald against Inglis, No 49. p. 13139.

*Answered*, The Clerks to the Bills are bound to accept, as cautioners, any persons reputed solvent at the time; and, as it is impossible for them to know the circumstances of every person offered to them, they must act upon the best information they can obtain. The information received in this case was so respectable, that it would have been their duty to have accepted the cautioners, although the chargers had appeared and objected, 1st March 1769, Stanners against Inglis, No 41. p. 13131. It is not the practice, in any case, to give intimation to the charger; and doing so does not free the clerks from their usual responsibility.

THE LORD ORDINARY assoilzied the defenders.

Upon advising a petition, with answers, the LORDS "adhered."

Lord Ordinary, *Glenlee*. Act. *Tait*. Alt. *Inglis*. Clerk, *Sinclair*.

D. D.

*Fac. Col. No 49. p. 114.*

1799. March 9.

ELIZABETH WILKINS, and her ATTORNEY, *against* WILLIAM CAMPBELL.

## No 52.

A Sheriff-clerk subjected in payment of a debt, for which a warrant had been granted against the debtor, as in *meditatione fuge*, because he had accepted insuf-

EDMUND KELLY, a native of Ireland, after residing for a considerable time in England, came to Ayr in August 1795. He remained there till June 1796, when he was followed by Elibabeth Wilkins, a creditor for L. 1900, borrowed by him during his residence in England. She immediately presented a petition to the Sheriff, stating the amount of the debt due to her, the documents of which she produced; that Mr Kelly had clandestinely withdrawn from England, in order to avoid payment of it; and that she believed he would leave Scotland on hearing of her arrival.

The Sheriff ordered her to appear in Court, and give oath to the truth of the facts stated in her petition.