

1737. *July 1.*

The Ladies MARGARET and DOROTHEA PRIMROSES *against* The COMMISSARY
CLERKS of Edinburgh.

No 31.

In a pursuit against the Commissary Clerk, at the instance of the defunct's creditors, for damages sustained by his having received insufficient caution in a testament dative; the LORDS found, that caution must be taken by the Commissaries and their clerks, and that the caution must be sufficient, consideration being had to the circumstances of the parties at the time; and therefore found it relevant against the defenders to make them *subsidiarie* liable, that the cautioner accepted of by them was insufficient. See APPENDIX.

Fol. Dic. v. 2. p. 293.

1738. *February 21.* Mr JOHN CRAWFORD, Supplicant.

No 32.

By act 30th, Parl. 1469, and act 78th, Parl. 1563, notaries must be named and created by the King, and examined and admitted by the Lords; but an abuse having crept in of applying to the Court of Session to be admitted notaries, without any authority from the Crown, this was rectified upon an application of the clerk to the admission of notaries; and in time coming the clerks of Session were discharged to receive in any petition for any person's trial in order to admission as a notary, unless there were presented therewith, and lodged in the clerk's hands, a presentation signed by the clerk to the admission of notaries, and past under his Majesty's cashet. See APPENDIX.

Fol. Dic. v. 2. p. 293.

1740. *December 4.*

MAGISTRATES of ELGIN *against* The MINISTER and KIRK-SESSION.

No 33.

It was questioned between the Magistrates of Elgin and the Minister and Kirk-session, where lay the right of nomination to the offices of beadle, session-clerk, and precentor? Before the Reformation, the beadle was a church-officer, because the care of the fabric, and every thing belonging to it, was then solely in the hands of churchmen. The case is now different, where all churchmen are now stipendiaries only. It was therefore found, that the nomination of the beadle was not in the Minister and his Session, but in the Magistrates. The Kirk-session has a power of naming its own clerk; and they, with the Minister, have the right of nominating a precentor: But in this particular case, where a grant of certain emoluments was made by the Crown to the town of Elgin, for maintaining a music-master, who should be obliged to present in