

Ibidem, Not only has a kirk session the power of naming its own clerk, but but as the Court itself is not in the Crown's nomination, it was thought inconsistent that it should be even in the power of the Crown to confer the office, or to grant to any other the power of conferring it.

No 9.
ments of bap-
tisms and
marriages be-
long.

Ibidem, As the precentor was before the Reformation a church-officer, then called *psalmista* or *cantor*, it would appear that the right of nomination is in the minister and kirk-session; but then the office may be conferred by a grant of the Crown; and so it was found in this case, where a grant of certain emoluments having been made by the Crown to the town of Elgin, for maintaining a music-master, who should be obliged to present in the church, the right of nomination of the precentor was found to be thereby conferred upon the town; the minister's own office being patronate, it did not appear why that of precentor, which he and his session were pleaded to have power to present to, might not be also patronate.

It was remitted to the ORDINARY to hear parties, whether the emoluments of baptisms and marriages belong to the session-clerk or precentor? which may happen not to be insisted on for the precentor; for it is thought clear on the following considerations, that they belong of right to the session-clerk; *1mo*, As to baptisms, what is paid upon that account is for obtaining the kirk session's order for the baptism, and recording it, with which the precentor, as such, has nothing to do; *2do*, As to the marriages, what is paid for these, is in the same way paid for obtaining the order of the kirk-session for the marriage, and recording of it; and of both, the session-clerk gives the extracts; *3tio*, It is not to the precentor, but to the session-clerk, that parties give up their names in order to marriage; *4to*, It is the session-clerk, and not the precentor, who certifies the proclamation of banns to have been made, and that there is no objection; *5to*, A precentor is member of no court, whereas a session-clerk is a clerk of court, makes minutes, keeps records of the session's proceedings in whatever falls within their cognizance; and particularly, the session being judge in the first instance of the objections to marriage, the record of said proceedings is kept by the session clerk; and *lastly*, The penalty in use to be consigned before marriage, is consigned in the hands of the session clerk, &c. &c. See PUBLIC OFFICER.

Fol. Dic. v. 3. p. 371. Kilkerran, (KIRK OFFICERS.) No 1. p. 323.

1760. July 9.

WATSON *against* WATSONS.

SEATS in churches, which, by the disposition from the kirk-treasurer, are devised to a person and his heirs, and others his nearest representatives whatsoever,

No 10.

No 10. do not follow the common rules of heritage, but divide among the nearest relations, in the same degree.

Fol. Dic. v. 3. p. 370. Fac. Col.

* * * This case is No 9. p. 543I. *voce* HERITABLE AND MOVEABLE.

1761. February 6.

LIEUTENANT-GENERAL SINCLAIR, and other HERITORS of the Parish of Kinghorn
against The MAGISTRATES and TOWN COUNCIL of that Burgh.

No 11.
Area of a church, how to be divided between a burgh and a landward parish. In what proportion are they to pay the expenses of repairing the church and manse.

THE parish of Kinghorn is partly landward, and consists partly of a burgh of that name. By the ancient usage of the parish, when the church and minister's manse fell into disrepair, the expenses necessary on that occasion were divided into two equal parts, one of which was paid by the town, and the other by the landward parish.

In 1759, the church and manse being both in disrepair, a meeting of the Heritors and Magistrates was called; and it appearing, from an estimate given in, that the expense of repairs would amount to L. 102 : 18 : 10 Sterling, the Magistrates and Town Council were appointed to make payment of one half of that sum, conform to use and wont, and the other half to be paid by the heritors, according to their respective valued rents within the parish.

The Magistrates brought a suspension of this decree, complaining that it was unequal and unreasonable to impose one half of the burden of these repairs upon the town, and lay only the other half upon the landward parish, which was extensive and opulent, and insisting, that the proper rule for settling the proportion of repairs to be paid by the town as well as the heritors of the country parish, was their respective valued rents. On the other hand, it was *maintained* by the heritors, that the town had been in the immemorial use of paying one half of these reparations; and that they had no reason to complain, as they possessed a much larger share of the church-area; at the same time, the heritors were indifferent in what proportion the division of repairs was made, provided the area of the church was divided in the same proportion. And in order to have this matter settled, a process was brought at the instance of the Heritors against the Magistrates and community of Kinghorn, for having the church area divided amongst them according to their several interests.

' THE LORD ORDINARY found the defenders liable in a share of repairing the manse, office-houses, and kirk of Kinghorn with the heritors of the landward part of the parish, in proportion to the amount of the cess paid out of the burgh of kinghorn, and that out of the landward part of the parish; and that the defenders are entitled only to the possession of a share of the area of the kirk effeiring to that proportion.'