

THE LORDS therefore refused to authorise his admission.

No 48.

Act. *Ilay Campbell, Cullen, Arch. Campell.*

Alt. *Hen. Erskine, W. Stuart.*

N. B. When the cause was about to be decided, the objectors produced a paper said to have been given in to an inferior court, with this title, Defences for Jane Seymour (Angus's wife) and Company, and likewise certain shop-accounts of hers, bearing the same addition of Company to her name; an appellation, as they contended, which indicated either an equivocal conduct on the part of Angus, in his thus seeming to avow, whilst on other occasions he disclaimed connection with his wife's business; or else a design to mislead his creditors into a belief that the shop-goods, as being a company concern, were, so far, not attachable for his debts.

S.

Fol. Dic. v. 4. p. 195. Fac. Col. No 92. p. 142.

1785. February 23.

DAVID SIBBALD *against* HENRY DAVID INGLIS.

SIBBALD pursued Mr Inglis, Depute-clerk of the Bills, in an action of damages, for his having received an insolvent cautioner in a process of suspension of a charge at the pursuer's instance. The charger's agent did not appear in the bill-chamber on the occasion; and the clerk trusted to the representation of the cautioner's sufficiency, given by the doer for the suspender, and aided, as he supposed, by the circumstances of the smallness of the debt, it being under L. 7, and the cautioner's bearing the designation of "late deacon of his trade in the town of Cupar."

Pleaded for the defender; The Clerk of the Bills must, in general, be supposed to know nothing personally of the cautioners offered to him; and from the distance of their residence, he will most frequently, too, be prevented from obtaining information concerning them. To interpret literally the act of sederunt of 18th February 1686, so as to render him liable in damages, not only for receiving an insufficient cautioner, but for refusing one that eventually may be found to have been solvent, would be in effect to subject him to the hazard of becoming responsible for the debt, in almost every instance in which the charger or his agent did not authorise him to accept the caution tendered. It cannot be the purpose of the law to reduce any public officer to so hard a situation; and accordingly it has been found, that if the Clerk of the Bills be free of any malversation or culpable negligence, he is not answerable for the solvency of cautioners; 1st March 1769, *Stannars contra Inglis*, No 41. p. 13131.

Answered; The uniform opinion of lawyers, and a train of decisions of the Court, give countenance to a literal construction of the enactment in question; *Stair*, p. 775. et seq.; *Bankton*, vol. 1. p. 459.; *Erskine*, p. 475.; *Fountain-*

No 49.

How far the Clerk of the Bills is liable for the insufficiency of a cautioner in a suspension?

No 49.

hall, v. 1. p. 2. ARRESTMENTS; (*see* APPENDIX.) Stair, 2d Dec. 1680, Alston *contra* Riddel, *voce* REPARATION. In the case of Stannars, the charger's agent had appeared and taken out a copy of the bill, without lodging any caveat against the receiving of the cautioner, which was considered as a tacit approbation of him; and it is admitted, that the same defence would have been valid in the present instance; but no degree of acquiescence can here be shewn.

The Lord Ordinary "assoilzied the defender."

THE COURT, however, "altered the Lord Ordinary's interlocutor, and found the defender liable in damages and expenses to the pursuer."

The defender reclaimed; but his petition was refused without answers.

Lord Ordinary, *Stonefield*. Act. D. *Williamson*. Alt. H. *Erskine*. Clerk, *Menzies*.
S. *Fol Dic v. 4. p. 197. Fac. Col. No 201. p. 315.*

1795. *March 3.*

LORD FREDERICK CAMPBELL, Lord Clerk-Register of Scotland, *against* ANDREW STUART, Keeper of the General and Particular Register of Sasines at Edinburgh.

No 50.

The right of appointing the keeper of the general register of sasines belongs to the Crown, and not to the Lord Clerk-Register.

The Lord Clerk-Register has the right of marking the books of the general register, and of all the particular registers of sasines, and is also entitled to the ultimate custody of them.

THE Lord Clerk Register was originally Clerk of Parliament, and of the other great courts and councils, in which capacity he had the charge of the public records; and as Clerk of the Court of Session, a variety of records were, by special statutes, put under his care, 1597, c. 265, 1600, c. 13, 1696, c. 19.

Independently, too, of any statute, as the King's great clerk, he was the keeper of all records, the custody of which was not otherwise provided for. In this way, the artillery and army accounts, books of the expense of the King's works, books of rates, and many other papers of the like sort, were transmitted to him. Almost all records, too, of a judicial nature, such as notaries' protocols, sheriffs-books, and the like, were sent to him at stated periods, for preservation.

In former times, all those records were deposited in the Castle of Edinburgh, and more recently in the apartments below the Parliament-house, whence they have been very lately removed to the New Register-Office.

After various ineffectual attempts to establish a record of sasines, and other writs relative to feudal property *, the act 1617, c. 16. was passed, placing the registers of sasines on their present footing, and intrusting the care of them to the Lord Register. This statute, after enacting that there shall be a public re-

* See 1503, c. 89.; 1540, c. 79.; 1555, c. 46.; also two unprinted statutes in 1599 and 1604; Acts of Sederunt, (Edinburgh, 1790,) p. 29. and 35.