

## RECOMPENCE.

## SECT. I.

If one can be made liable whose benefit was not intended.

1623. June 14.

DUNBARS *against* Mr. JOHN HAY.

**S**USPENSION for removing from manse and glebe of the Sub-Chancellor of Murray; Reasons, *1mo*, Because by the laws of the Realm, and acts of General Assembly, it is statuted, that intrants to benefices shall satisfy the relict, bairns, and executors of their predecessors, or their nearest of kin, of the hail debursements made by them, or their predecessor, or by bigging, mending, meliorating the glebe, manse, and yards, before his entry thereto; and true it is, umquhile Mr David Dunbar, brother to the suspenders, paid to Mr Thomas Forbes, his predecessor, 1000 merks for meliorating the manse and glebe; and the said umquhile Mr Thomas Dunbar himself wared thereon, in his own time, 500 merks, which in whole being L. 1000, must be paid before they remove; *2do*, They being *in bona fide* to possess while they had been satisfied, have laboured and sown the glebe, and so cannot remove therefrom while the separation of the crop; *3tio*, The charger has judicially referred himself to the Ministry what satisfaction he shall give to the suspenders, and while the Ministry determined, no removing; *4to*, An ann is due by the laws of the realm and acts of the Assembly, to the relict, bairns, and nearest of kin, of the year after his decease, and he died in the end of September last, and so there is due the ann of the crop 1622 to the suspender as brother, and the glebe being a part of the benefice, the fruits of that crop will appertain to them, and they shall remove after separation. The pursuer conjoined the debursements and submission. Finds the letters orderly proceeded, notwithstanding of the submission, and notwithstanding the fourth reason, and finds the glebe to be noways part of the ann; and notwithstanding the second reason, in respect of the charge of horning produced, dated 11th February 1622, before sowing, which put them *in mala fide* to sow; but the LORDS declare they will have consideration of the quantity of profits of the glèbe, and increase thereof, when

No 1.

No reimbursement can be craved by the intrant minister for meliorations of the glebe made by his predecessor.

No 1. the same shall be pursued by the charger against the suspenders; and notwithstanding also of the first reason, except for the mending of the manse by the defunct in his own time, the expences whereof shall not exceed 400 merks, if there be an act, which the charger alleges, to be anent the refunding of the expenses by an intrant restraining the same to that sum, which the charger promised to produce, and therefore admit that part of the first reason, anent the defunct's expenses debursed in his own time, upon mending of the manse by himself, to the suspender's probation, and assignees a day to prove.

Clerk, Hay.

*Fol. Dic. v. 2. p. 316. Nicolson, MS. No 65. p. 43.*

No 2. 1664. February. HODGE against BROWN.  
A TACKSMAN of a house has no claim for what he builds or repairs, unless the same be conditioned in the tack.

*Fol. Dic. v. 2. p. 316. Gilmour.*

\* \* This case is No 118. p. 2651, *voce* COMPENSATION.

No 3. 1667. June 12. LUMSDEN against SUMMERS.  
A PARTY having furnished corn and straw to a rebel for entertaining of his cattle, was found to have no claim against the donatar of escheat, though the only person who was benefited thereby, in regard the furnisher followed the faith of the rebel only, without any view to benefit the donatar.

*Fol. Dic. v. 2. p. 316. Dirleton.*

\* \* This case is No 44. p. 8359, *voce* LITIGIOUS.

No 4.  
A tacksmen after being dispossessed by letters of ejection, continued to sow the ground. The crop found to belong to the proprietor, he paying expense of seed and labour,

1671. February 22. GORDON against Sir ALEXANDER M'CULLOCH:

WILLIAM GORDON pursues Sir Alexander M'Culloch for spuilzieing of certain corns; who *alleged*, Absolvitor, because the defender having right by apprizing to the lands whereon the corn grew, did warn the pursuer, and obtained decreet of removing against him, and thereupon dispossessed him; and finding the crop upon the ground, he might lawfully intromit therewith, *nam sata cedunt solo*, especially where the sower is *in mala fide*; but here he was in violence after a warning, and did continue to sow after decreet of removing; yea, a part was sown after he was dispossessed by letters of ejection. The pursuer