1776. *November* 21. WILLIAM THOMPSON *against* ANDREW CROMBIE.

PUBLIC POLICE.

**The proprietor of a house within burgh has right to prevent any conterminous proprietor from painting his name, or erecting a sign upon it, against his will.**

[*Fac. Coll., VII,* 300; *Dict., App. No. I.*; *Pub. Pol., No. I.*]

GARDENSTON. This sign is *innocuæ utilitatis*, and the tenant who possesses the house does not complain.

KENNET. I doubt of the interlocutor. It is admitted that the whole house belongs to Crombie, and I do not see how any thing can be put on his wall without his consent.

COVINGTON. The insignificancy of the cause will not vary the principles on which it ought to be determined. The plea of *innocuæ utilitatis* is not receivable, as was determined in the case of the *Earl of Eglinton and Fairlie*; for property is a sacred thing. If Crombie may put up a sign, so may any person in the close; and thus there will be no room for Thompson's tenants to put up signs.

PRESIDENT. When I set a house to a tenant, it is with the power of his using it for his own advantage, not for that of others. As most tradesmen live in closes, the argument used by Crombie will lead to this, that tradesmen may load the house next to the street with as many signs as they please.

KAIMES. The tenant lies by and says nothing. Thompson asks Crombie why do you put up the sign? Crombie answers, The tenant gives me leave. Thompson replies, *Where* is that consent? there is no such thing. The tenant remains with his arms across, and lets the landlord fight his battles.

On the 21st November 1776, "The Lords found that Crombie has no right to affix his sign on the house;" altering Lord Monboddo's interlocutor.

*Act.* Adam Ogilvie. *Alt.* Allan M'Conochie.

*Diss.* Gardenston, Monboddo.

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1776. *November* 21. LIEUTENANT-COLONEL JAMES ST CLAIR *against* MISS JEAN ALEXANDER of Rosebank.

KIRK.

**Whether there can be exclusive property in a seat in a church?**

[*Fac. Coll. VII.* 263; *App. I.—Kirk, No. I.*]

HAILES. It is not proved that Yaxley Davidson erected this seat and possessed it for forty years previous to the citation in this process. But, independ-

ent of this, there were three seats, supposed to be the proportion of the church belonging to Roslin; two of them were thrown into Yaxley Davidson's seat, so that two-thirds of the Roslin seat goes to nine acres of the barony, and one-third to the rest. It is plain that part of the tenants in Roslin continued to sit in the seat fitted up for Yaxley Davidson. If the rights of the superior and the vassal are to be separated, is not the possession of the tenants to be held as the possession of the master? But the possession is said to have been *ex gratia*. This might do very well had Yaxley Davidson had any antecedent right; but he had none, and how can he acquire against the superior, while the tenants of the superior possessed during that space which was necessary for Yaxley Davidson's possession, in order to his acquiring.

MONBODDO. A seat in a church cannot be conveyed separately from lands: It is annexed to lands. There is an example of this sort in a real servitude, which, by our law, cannot be separated from lands. It is impossible, by any disposition, to dissolve a right to a seat from a right to lands. The consequence is, that no proportion of the seat can be alienated beyond the proportion of lands. With respect to possession, it is promiscuous, and must continue so until a division.

KAIMES. I have no notion that a seat in a church is a real appendage of lands. The seats are appropriated to the parishioners. When a parish church is sufficient for the purpose of affording room to the parishioners, the decent way, in order to prevent confusion, is that it be divided; and, according to the supervenient circumstances of the parish, this division may be altered from day to day. If there is sufficient room left for the other inhabitants of the barony, Miss Alexander may continue to possess, but not otherwise.

PRESIDENT. A division of a church must be according to the valued rent. When once there is a legal division, that must remain the rule. The legal right is in the heritors, not in the inhabitants. But it is not necessary to determine that point. There has been no division of the church hitherto. When that comes it is time enough to determine. I think that seats in a church must go along with the lands. If there is not sufficient room in a division, then will it be the time to make the subject a commonty. Miss Alexander has not proved an exclusive right of possession.

GARDENSTON. There are two rules with respect to the possession of seats in church: 1. When there is a general division, it must be by the valued rent; because the burden of building and upholding lies on the valued rent. Were that rule not to be followed, there would be a necessity of dividing churches day after day. 2. It is equally certain that, until a *general* division take place, long possession, though not for 40 years, must be the rule.

COVINGTON. This last opinion would be productive of endless disputes among the heritors. Supposing that a division had been actually obtained, and that Colonel St Clair feus out part of his ground, the feuar would be entitled to a share. There might be in every case a subdivision of the share of any one estate. Miss Alexander is entitled to a proportion. Until a particular division is obtained, she is entitled to keep possession; but this will avail her nothing, for the possession has been promiscuous.

On the 21st November, "The Lords found that the three seats are the property of the barony of Roslin; and that the parties, according to their respec-

tive rights, are entitled to hear divine service in the church of Lasswade, until a division shall be made." Remitted to the Ordinary to proceed accordingly.

*Act.* R. M'Queen. *Alt.* J. M'Laurin.

*Reporter,* Covington.

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1776. *November 22.* ELIZABETH LECKIE *against* AGNES and JANET LECKIE.

PRESUMPTION—WRIT—REGISTRATION.

**Registration of a Deed found to be equivalent to delivery, with regard to heritage, but not as to moveables.**

[*Faculty Collection, VII.* 300 ; *Dict., App. I. ; Presumption, No.* 1.]

GARDENSTON. If a deed appears in the register, the presumption is, that it was registered by the authority of the granter: The proof to the contrary lies on the person objecting.

COVINGTON. In common cases, the putting on the register is equivalent to delivery; but I observe, from the circumstances of the case, that the father did not at first mean to put the deed upon record: besides, he afterwards granted a bond to the same disponee, exceeding the value of the subject, which implies that he still supposed the subject to be at his disposal, notwithstanding the registration.

HAILES. The reason for granting that bond was quite different: a doubt had arisen, whether old Leckie was the fiar, although he had an unlimited right of burden. To secure matters against this question, Leckie exercised that power of burdening which he undoubtedly had, that so his disponee might be secured, in the one way, in the subject, and, in the other, in its value.

KAIMES. I should relish Lord Covington's doctrine, if it could be confined to the present case, for the second deed is more rational than the first: the registration was by order of old Leckie, and it is the most formal of all deliveries.

KENNET. The settlement 1771 was the *ultima voluntas,* and rational; which the settlement 1767 was not; but we are not at liberty to support the deed on that account. The only question is as to the evidence of delivery.

On the 22d November 1776, " The Lords found that the deed 1767 was a deed properly delivered, and therefore sustained the reasons of reduction as to the heritage, and remitted the other points to the Ordinary ;" adhering to Lord Monboddo's interlocutor.

*Act.* Ilay Campbell. *Alt.* G. Wallace.