that the apprentice entered to the service, and was taught and alimented by the master;" altering the interlocutor of Lord Hailes.

Act. H. Erskine. *Alt.* D. Rae.

N. B.—I do not recollect to have seen this equitable interpretation of the Act 1681 ever extended before to the case of cautioners.

1781. *July* 24. MR JOHN EWART *against* CHARLES, &c. GRIERSONS.

GLEBE.

Import of arable lands in the statute 1663, c. 21.

[*Fac. Coll. VIII.* 39; *Dict.* 5162.]

BRAXFIELD. After the lapse of 118 years since the date of the statute 1663, it is strange that lawyers should differ as to its interpretation. It is necessary to inquire into the state of agriculture in 1663, in order to understand the meaning of the Act 1663. In those days, every thing capable of being ploughed was ploughed: the farmers ploughed and left lee in rotation; but there was another part called *croft* or *infield*: all the dung that could be raised on the farm was bestowed on that ground, and it was constantly cropped. Had a tenant suffered his croft land to lie lee, he would have been considered as a ruined man. The opinion delivered by Lord Kilkerran, in *Sir William Dalrymple's* case, appears to be a just one: otherwise a minister could get nothing for grass, except mosses and moors. By cows, the legislature understood milk-cows; and it could not mean to allocate such grass as was incapable of producing milk. It was not the intention of the legislature to give bad and useless ground: enough is admitted in this case to decide that the lands in question are not croft-lands, or arable. These lands have not been touched with a plough for ten or eleven years: the inquiry ought to be, what is the present situation of the land, not what the land may hereafter yield.

KAIMES. If I were to interpret the Act of Parliament according to the present mode of husbandry, it would be hard to discover its meaning; but when we consider the old method, light breaks in upon us. In 1663, there was croft land, and a great deal of outfield: what else could be allotted to a minister for grass but a part of that outfield? If the ground is poor, the minister gets so much more: if good, so much less. The pasture must be such as to feed two cows and a horse: they must not be barely kept alive; they must be made useful. Twenty pounds Scots, the alternative in the Act, would, in 1663, have found grass for two cows and a horse; for, at that time, there was a superfluity of grass,—at present grass cannot be had at that moderate rate.

MONBODDO. The value of the land is a material consideration. This land is *arable;* exceedingly fit for ploughing; has actually been ploughed; and there

was a tenant who meant to take it for the purpose of ploughing. It is very true, that formerly the distinction of *outfield* and *infield* was universal; but the outfield was the most extensive, and the most valuable of the two. [It has been demonstrated that *outfield* is of no value at all; but Lord M——— is not modern enough to know that.] Since the Act 1663, there never has been a designation of outfield.

WESTHALL. From long service in the church, I can assert that all designations of grass have been from *outfield*: I could give twenty instances of it.

GARDENSTON. I have always considered this Act, 1663, as a law of humanity and propriety. I am apt to think that both infield and outfield were excepted. The old division of land was infield, outfield, and pasture, properly so called. Such pasture, though it might sometimes be ploughed, was not arable: from the proof, I am of opinion that the ground in dispute was generally in a state of pasture. The witnesses say, that the ground was capable of being *made arable.*

HAILES. That the present state of the ground must be the rule in designing grass to ministers, and not the possible future condition of it, will be plainer from examples than it can be by arguments. The ground in the neighbourhood of Aberdeen, on the east of Tranent, and at the Figgate Whins, might, some years ago, have been designed for grass; and a large designation would have been made by reason of the state of the ground. All those parcels of ground are now become of more value than the ground in controversy will ever be.

On the 24th July 1781, "The Lords found the ground in question designable as grass; and they modified seven acres in whole;" (being about the medium ascertained by the witnesses.)

Act. A. Crosbie, &c. *Alt.* D. Armstrong, &c. [Concluded cause.]

Diss. Monboddo.

1781. *July* 25. KATHERIN and ELIZABETH SCOTTS *against* JOHN HEPBURN.

SERVICE OF HEIRS.

An adjudication on a trust-bond vests an active right in the trustee, and transmits it to his heirs.

[*Fac. Coll. VIII.* 130; *Dict.* 14,487.]

BRAXFIELD. This method of making up titles has been established ever since 1621. In practice there are instances innumerable of this. Whenever I was not sure to what predecessor a man should serve, I always advised a trust-bond and adjudication in implement, as an excellent *herry water net.*

KAIMES. Why should words be used to prove what every man is satisfied of?

GARDENSTON. An adjudication, although for a sum below the value of the subject, is as good a title as a service is. *Gordon* against *Ogilvie* of *Balbegno.*