

intention of the parties *here* was to give a permanent right to the Preston family; and this intention must be made effectual.

GARDENSTON. *Here* there is an implied obligation to perfect the personal right. An obligation merely personal must remain so till the creditor makes it real: the debtor is not bound to do any thing.

PRESIDENT. I admit that this is an ungracious cause. The law will make every thing effectual that is intended to be a real right; but I doubt of that: when the deed is not only personal but complete *suo genere*.

On the 20th November 1781, "The Lords found that the tenor of the back-bond libelled must be inserted in all the titles and investitures of the ground in question;" altering the interlocutor of Lord Alva and their own interlocutor of the 27th July 1781.

Act. R. Blair. *Alt.* D. Rac.

Diss. Alva, Hailes, President.

N.B. When the cause was formerly advised, there were *against* the Ordinary's interlocutor, Auchinleck, Monboddo, Braxfield.

Non liquet, Stonefield.

1781. November 23. FEUARS and HEADS of FAMILIES of CRITFF *against* ALEXANDER MORAY of ABERCAIRNIE and OTHERS.

KIRK.

Expense of rebuilding a Ruinous Church.

[*Fac. Coll.* IX. 6; *Dict.* 7924.]

BRAXFIELD. They who profit by a church when built, should naturally be at the expense of building it: but this rule produced inconveniences when parishioners were not fixed in a parish: such as tenants without tacks, or having tacks which were speedily to end. The rule then was properly varied, and the burden was laid on the heritors. This, on the whole, makes no great difference; for, if they bear this burden, they will get a proportionally greater rent from the tenants. Valued rent is a good rule in general; for real rent is uncertain, and there may be fraud in ascertaining it. Valued rent cannot be the rule when there is a town or village. None can draw more than the contribution that he gives. What a strange thing would it be to make the valued rent the rule when there is a town in the parish? Suppose that the landward parish has 9-10ths of the valuation, it gets 9-10ths of the area, and yet 1-10th is, as that is necessary for its accommodation. It is said, "that the heritors may set their superfluous room;" but why should money be laid out on such uncertainties? Besides, *who* is to force the inhabitants to take seats, or to fix the rent? No

such power is in any court of justice : it would require an Act of Parliament to confer it. Here the town must have 3-4ths of the area of the church, because 3-4ths of the inhabitants of the parish live in the town ; and, consequently, it must pay 3-4ths of the expenses : the expenses must be laid on the proprietors of houses.

MONBODDO. If the inhabitants of the town-pay nothing, they can have no share in the division. From the days of Alexander II. to 1563, the expense was laid on the parishioners ; afterwards, it came to be laid on the heritors.— This is the rule as to landward parishes, but not when there is a burgh in the parish : whether royal-burgh or burgh of barony it makes no difference.

GARDENSTON. The inhabitants of Crieff mistake their own interests : they are willing to give up their share in the church, and to take their chance of hiring seats. This is as if they should choose to buy from a retailer, rather than from one who deals in wholesale. The inhabitants of towns and villages are good people : they will go to church ; and we ought to make *that* as easy to them as possible ;—whether royal-burghs or villages makes no difference. The persons who are to be subjected are those having permanent interest ; not *casual* but *perpetual* residents.

ALVA. We must not depart from the general rule as to landward parishes, as to which the *valued* rent has been the rule ; but *that* will not apply *here*.

PRESIDENT. If the heritors build the church, the area must belong to them. The Court can give no authority as to letting the seats. The general rule imposes the load on the parishioners ; but there is a modification established in practice : that modification does not take place in questions like this. The various agreements which have been made by individuals, in different cases that have occurred, prove that the rule will not apply to questions like the present one. It would be a strange modification of the law to exclude *three-fourths* of the parish from attending divine worship ! The case of *Kinghorn* was determined on practice, which presumed some *previous concert*.

23d November 1781.—The Lords found ———,

Act. W. Robertson, H. Erskine. *Alt.* Ilay Campbell, &c.
Hearing in presence.

1781. November 28. BENJAMIN BELL. *against* WILLIAM CAMPBELL.

EXECUTOR.

Competition between an arrestment used by a Creditor of a defunct, and an intimated assignation by his executor.

[*Fac. Coll.* IX. 16 ; *Dict.* 3861.]

BRAXFIELD. The executor is trustee for all concerned, and cannot withdraw