the right of the factor on the subjects of Alexander Orr, the son; the son's right is a general disposition. A debtor, in such case, may safely make payment, but he cannot be compelled by a general disponee to make payment. The Act 1690 shows the difference of a *jus ad rem* and a *jus in re.* It was not the purpose of the Act 1772 to carry off the estates of bankrupt defuncts; for the Act of sederunt 1662 allows creditors to claim, and they will come in *pari passu.* The Act 1712 did not give more to the factor than what the bankrupt had himself. The act of sequestration will prevent the creditors of Alexander Orr from taking advantage of one another.

JUSTICE-CLERK. The subject is moveable. The general disposition will not vest. My difficulty is as to the sequestration, which goes to the whole subjects that belonged to Alexander Orr, the father. Shiells was a party in the sequestration.

PRESIDENT. That is a mistake. Shiells was no party in the sequestration. It was obtained on the suit of Alexander Orr, the debtor.

On the 19th February 1784, "The Lords preferred Archibald Shiells, in virtue of his confirmation;" adhering to the interlocutor of Lord Kennet. And, 10th March, 1784, "adhered."

Act. Ilay Campbell. *Alt.* W. Baillie.

1784. *June* 15. CHARLES, EARL of PETERBOROUGH, *against* Mrs MARY GARIOCH.

PLANTING AND INCLOSING.

The Act 1661 not to be extended to the case of a conterminous Tenement, where the charges of inclosing would not be compensated by the resulting Improvement.

[*Faculty Collection, IX.* 242; *Dictionary,* 10,497.]

HAILES. The opinion of the visitors must be held just, for it was given at the desire of the parties, and nothing is offered to disprove it. They agree that, on some part of the march, there *must be earthen fences.* And one of them says, that, for the reparation of such fences, there will be required *annually at least one-half of the prime cost.* Now, it is speaking within bounds to say, that this reparation is equal to a complete fencing every three years. The statute certainly meant that there should be a permanent fence, and it never could have meant that one heritor should be burdened with a *new march-dike* every *three years.* If so, this case falls not within the statute, interpret it as liberally as you will. In the case of *Riddel* against the *Marquis of Tweeddale,* there was no doubt as to the practicability of making permanent fences: so that case does not go to this. And, in the case of *Riddel,* the most sanguine improvers on the Bench admitted that the law did not reach to *flow-*

mosses. Between them and mosses, which the proprietor does not propose to drain, there seems no difference.

JUSTICE-CLERK. The statute in question is a salutary one, and attended with most beneficial consequences. The *mutual* benefit of heritors is intended; their *equal* benefit could not be provided for. A march-dike that cannot be completed is nothing. The visitors, named by the parties themselves, report that the plan proposed is not beneficial, and that it is impracticable.

BRAXFIELD. The law was well calculated for the circumstances of the time, when there were no leases, or, at most, short ones. Now things are changed, and an heritor, whose lands are let on a long lease, may suffer severely, by paying for march-dikes, and yet receive no indemnification from his tenant; and therefore I am not for extending the law by a very liberal interpretation.

PRESIDENT. I remember that Lord Alemore thought that the statute in question was temporary. I did not think so; but I should have endeavoured to have been of that opinion, if the statute could have been extended to this case. [He quoted the case, *Wilson* against *Sharp of Houstown.*]

On the 15th of June 1784, "The Lords found that the Act of Parliament does not apply to this case, and therefore assoilyied, and found the pursuer liable in the expenses of report and extract."

Act. Ilay Campbell. *Alt.* R. Blair.

1784. *June* 16. Mr ROBERT MUTTER *against* The EARL of SELKIRK.

MANSE.

A Minister of a Parish, partly landward, and partly consisting of a Royal Burgh, is not entitled to demand the building of a Manse, but may claim a sum for house-rent.

[*Faculty Collection, IX.* 244; *Dictionary,* 8513.]

JUSTICE-CLERK. The minister of Kirkcudbright has no title to a manse. By comparing the different acts of Parliament together, it is plain that the legislature, in 1663, meant to give manses in landward parishes only. There is no evidence of three churches. The two, besides Kirkcudbright, were chapels, or altarages. But, supposing the case to have been different, the annexation will not give the minister of the burgh a right to a manse.

On the 16th June 1784, "The Lords suspended the charge, without prejudice to the minister's insisting for a competent house-rent."

Act. G. Wallace. *Alt.* A. Wight.

Reporter, Alva.
