

On the 25th of July 1781, "The Lords found that an adjudication upon a trust-bond vests an active right in the trustee, and transmits to his heir; and therefore preferred Katherin and Elizabeth Scotts;" adhering to the interlocutor of Lord Monboddo.

For J. Hepburn, G. Wallace. *Alt.* G. Buchan Hepburn.

1781. *August* 10. JOHN KINLOCH *against* JOHN OGILVIE.

PUBLIC POLICE.

Steeping lint,—how to be performed.

[*Faculty Collection, IX. 15; Dictionary, 13,183.*]

THE Lords found, that, at common law, independent of statutes, it is illegal and unwarrantable to divert water from a brook, for the purpose of steeping lint in pits, if that water, after having served the operation of steeping lint, is returned into the brook.

*Act.* J. Erskine. *Alt.* W. Nairne.

*Reporter, Alva.*

1781. *Nov.* 14. HUGH, LORD REAY, *against* MR ALEXANDER FALCONER.

GLEBE.

Right to the sea-ware on the shore of one.

[*Fac. Coll. IX. 2; Dict. 5151.*]

GARDENSTON. A glebe is for furnishing grass and corn, and not for the purpose of manufacturing kelp. The kelp is not produced on the glebe, but in the sea adjacent to the glebe.

MONBODDO. I have always understood that a minister's glebe was given for grass and corn, not that every thing *de celo ad centrum* was given. Would the minister have had right to a mine discovered within the limits of his glebe? Had he found in it a marle pit, or a limestone quarry, he might have used it for the benefit of his glebe, but not for sale.

BRAXFIELD. A decret of designation of a glebe is a bounding charter: the

kelp lies without those bounds, in the sea. Lord Reay, by his charters, is entitled to the *universitas*, and he is not denuded by the designation of a glebe. Adventitious benefits may possibly accrue to the minister in consequence of the designation.

PRESIDENT. Add to all this, that the manufacture of kelp was not practised till after the designation of this glebe: mines do not belong to the minister, but only a right to the surface of the ground. The application of a different rule might be fatal. If, by chance, you should design a glebe to the dip of a coal, the consequences would be to prevent the coal from being wrought.

On the 14th November 1781, "The Lords found that the minister had no right in the kelp, and decerned in the declarator;" adhering to the interlocutor of Lord Hailes.

*Act. W. Honeyman. Alt. W. Robertson.*

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1781. November 20. SIR CHARLES PRESTON *against* ARCHIBALD, EARL OF DUNDONALD.

#### IMPLIED OBLIGATION.

A superior granted a feu of ground absolutely and irredeemably; and the feuar afterwards granted a bond, obliging himself and his heirs, whenever he should think fit, to dispose of the subject,—to offer it to the superior at a stated price. Found, that the feuar must insert the tenor of this back-bond in all the subsequent investitures of the ground, so as to make the right of pre-emption effectual against singular successors.

[*Fac. Coll. IX. 29; Dict. 6569.*]

MONBODDO. *Aequum et bonum* is deeply concerned in this case. My rules of equity are learned in the Prætor's edict. All words that are proper have not been employed: nevertheless, the intention is clear; and the court is called upon to make it effectual. If the question were with a creditor or a purchaser, the Court would not interpose. I think that, within sixty days of its date, this deed of reversion might have been recorded, and then that it would have been effectual against all the world. I think that, in good conscience, and by the law of the land, the heir of Charles Cochran is bound to renew the deed, that it may be put on record.

BRAXFIELD. The only interest that the Earl of Dundonald can qualify against doing what is demanded of him, is, that he should not be obliged to do what in honour and conscience he ought to do. When a man comes under an obligation merely personal, and not respecting any particular subject, the creditor must make it effectual by legal diligence, as he best can; but when that obligation respects certain subjects, the parties contracting must do every thing to make it effectual. In the case of lands, if I *sell*, without saying any thing more, I can be obliged to grant procuratory and precept to complete the sale. The