On the 26th June 1778, "The Lords sustained the reasons of reduction as to the grass."

Act. D. Rae. *Alt.* A. Crosbie.

Reporter, Covington.

Diss. Westhall, Kennet, Gardenston.

1778. *July* 2. SIR LAURENCE DUNDAS *against* ARTHUR NICOLSON and ROBERT HUNTER.

MANSE.

The Superior not liable to be assessed for the expense of building the manse.

[*Faculty Collection, VIII.* 42; *Dict.* 8511.]

MONBODDO. The superior is not liable in the burden in question, but only landholders who have the *dominium utile*. There is a valuation here by mark and penny lands, older, perhaps, than the valuation by old extent. Cess and parochial burdens are to be viewed differently: a proprietor has a family in the parish,—a superior has not. It does not appear that there has been any constant practice; and we know nothing of any practice before 1731. As to the practice through Scotland, it is so various that no rule can be discovered. The feuars here ought to have insisted only for deduction of the feu-duties, payable to Sir Laurence Dundas; but that would have laid no additional burden on Sir Laurence Dundas.

BRAXFIELD. I can discover nothing from the inquiries made, as to practice, which may have influence on this cause. A *superior*, in the sound construction of the statute, is not to be held as a *proprietor* or *heritor*. All parochial burdens fall to be laid on the *dominium utile*, such as poors' rates and schoolmasters' salaries, statute-work for the repairing of highways, on this principle, that *cujus est commodum ejus et incommodum*. The case of repairing the manse is the same with the case of building a church: they who have only a right of superiority have no share in the division of a church. The superior is not entitled to set his foot within the church, or even within the parish. The valued rent is the general rule for parochial burdens; and, upon the whole, it is a good rule; but when it chances not to be equitable, it is departed from; as in the case of a royal burgh, where there is a landward parish.

KAIMES. The practice is so various that it determines nothing. I am convinced by Lord Braxfield's argument, so far as it relates to the case, where the superior has only right to blanch duties. But, in feu-holdings, the superior has a material interest; for his feuars are, in reality, tenants, although, by the fall in the value of money, the feu-duty ceases to have the effect *now* which it *originally* had; and the interest of the vassal becomes greater. But what if the superior, instead of feuing out the whole, should only feu out a part of the estate?

BRAXFIELD. At first sight it may sound pretty well, that the superior should pay as he has feued out the lands at the rent. But take it the other way, and answer this question :—Could the superior, who has feued out the lands at the rent, claim the whole area of the church, and exclude the vassals altogether?

On the 2d July 1778, "The Lords found the letters orderly proceeded, and assoilyied Sir Laurence Dundas from the declarator; and, 22d July 1778, adhered."

For Sir L. Dundas, D. Rae. *Alt.* R. Blair.

Reporter, Covington.

1778. *July* 11. MATTHEW DONALDSON *against* PATRICK REID.

BENEFICIUM COMPETENTIÆ.—CESSIO BONORUM.

Decree of *Cessio* no bar to diligence against effects acquired by the debtor after the date of the decree.

[*Faculty Collection, VIII.* 52; *Dictionary*, 1392.]

BRAXFIELD. Here is a general question; and there are no decisions to guide us. I cannot agree in general to the proposal of a condescendence. The charger says that he does not ask any personal diligence. If the suspender has no effects, where is the hurt of the charge? If he has, why should the charge be suspended? It is only by means of legal diligence, such as arrestments and forthcomings, that the effects can be discovered. When a creditor goes on in diligence, it is the duty and business of the bankrupt to condescend on his funds, in order that it may be seen what ought to be allowed on account of the *beneficium competentiæ*.

COVINGTON. We cannot require the creditor to condescend on the funds belonging to his debtor. We will not suffer diligence to be stopt on that account. Let the diligence go on, and then we shall know whether the debtor ought to have the *beneficium competentiæ?* At present the complaint is premature.

JUSTICE-CLERK. The *cessio bonorum* does not take away the debt; neither does it suspend the diligence, so far as is consistent with the nature of the *cessio*. Should the creditor be so ill advised as to attempt to poind the bed, or wearing apparel of the debtor, it will then be time enough to stop him. Should the creditor do any wrong, the Court is open to the bankrupt.

On the 11th July 1778, "The Lords found the letters orderly proceeded."

Act. J. M'Laurin. *Alt.* W. Baillie.

Reporter, Kennet.