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.

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

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. Rae.

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 CRIEFF *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