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* residenters.

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

the funds *in medio* for any purpose but that of the trust. An executor confirming holds the subjects: 1*st*, For creditors; 2*d*, For legatees; 3*d*, For the nearest in kin. The statute 1695 has nothing to do with this case. When the nearest in kin abstains, it is in the power of his creditors to take up the subjects *in medio*: but this must not be done too rapidly; it must be after a year. The statute does not relate to the case of subjects already taken up by confirmation.

KAIMES. The case of *Crichton*, resorted to, was ill judged.

On the 28th November 1781, "The Lords preferred Benjamin Bell;" adhering to the interlocutor of Lord Kennet.

Act. D. Armstrong. *Alt.* A. Crosbie.

1781. *December* 8. JOHN, EARL of CAITHNESS, *against* BENJAMIN SINCLAIR of STEMPSTER.

ADJUDICATION.

First effectual Adjudication.

[*Fac. Coll. IX.* 120; *Dict.* 268.]

MONBODDO. I learnt, half a century ago, that the heir was *eadem persona cum defuncto*, and I do not choose to unlearn that. This adjudication is for a personal debt, though secured by infeftment; and so the exception of the Act of Parliament, as to adjudications on *debita fundi*, will not apply. It is said that here the adjudication is converted into a security; but, as it is held as a security for part of the penalty, it is still an adjudication.

BRAXFIELD. There is nothing in the specialties. An adjudication, led on the personal obligation, is perfectly good, and will be effectual for the purposes of the Act 1661. The adjudication, although restricted, is still an effectual adjudication. There is more difficulty as to the other point. In the course of 120 years, no example has occurred like the present case; so that the question is new. If an adjudication led against a predecessor, at the distance, perhaps, of fifty years, is to be the first effectual adjudication, creditors would immediately set about tearing the estate to pieces. No action can proceed against the heir within the *annus deliberandi*. The creditors have no method of carrying on diligence during that space; and it would be a solecism in law to say that the adjudication against the predecessor should regulate the interests of the creditors of the heir, while, at the same time, those creditors cannot stir. The natural construction of the statute is, that it supposes all the adjudications to be led against the same person, and all the debts are held, *fictione juris*, to be comprehended under one adjudication.

KENNET. Much ingenuity has been shown on the part of the petitioner, the Earl of Caithness. It was in the view of the legislature to introduce, as much as possible, a *pari passu* preference. I doubt as to the heir having it in his