

Custom has given a preference to menial servants, though I do not see a good reason for that. The distinction in the case of *Melville* against *Barclay* was on account of universal practice, which I and all sheriffs know. Were the judgment in this case to go for the servant, it would be a great alteration in the law. By the same rule the preference might be extended to merchants' clerks.

SWINTON. I remember well the case of *Barclay*. The Court was well pleased that, on inquiry, the practice turned out to be so general, because there was thought to be justice in it. I think that this case ought to be judged on the same principle.

ESK GROVE. I see no practice extending the case of *Barclay* to other cases. That case did not rest on principle alone; but there was the practice of the inferior courts, where questions concerning servants' wages are most commonly agitated. Here the Court is called upon to extend a supposed principle of expediency much beyond any practice.

JUSTICE-CLERK. The general principle of the law of Scotland is against privileges and preferences; all such are *stricti juris*. There might be as good reason to give preferences in the case of bankruptcy as the case of death: but the Court would not listen to that in the case of *Barclay*; they required practice, and on that practice they proceeded.

PRESIDENT. Were we to give way to this claim, it would have the effect of altering the law of Scotland in a very important particular. Property is transferred when *fides habita est de pretio*: so here personal labour was transferred when *fides habita de mercede solvenda*.

MONBODDO. The case of *Barclay* went upon constant practice, which is equal to law. Every thing that a merchant earns is by the labour of his clerks, and yet they have no preference.

On the 3d February 1789, "The Lords repelled the claim of preference."

Act. Ch. Hope. Alt. A. M'Conochie.

Reporter, Monboddo.

1789. January 25. ROBERT WILLIAMSON against CHARLES MERCER.

GLEBE.

"THE Lords were of opinion that a glebe, having been designed and possessed for 40 years, an heritor cannot challenge the possession as being beyond the dimensions of a glebe; but that encroachments made by the present incumbent must be deducted; and they remitted to the Ordinary to inquire into and ascertain the quantity,"—varying the interlocutor of Lord Monboddo.

For Mr Williamson,—D. Williamson. *Alt. J. Haggart.*

Diss. Monboddo, Eskgrove, Ankerville.