

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 assoilyed 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 condescence. 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.