

inquire into Calendar's circumstances, and then to do as he should see just. But, in the *first* place, They remitted it to Lord Stonefield *simpliciter*, leaving him to make the remit to the Sheriff in the above terms.

In the case above-mentioned, 11th July 1778, Donaldson against Reid, Lord Kennet's interlocutor was,—Suspends the letters *quoad* personal diligence against the suspender; but, in other respects, finds the letters orderly proceeded. This interlocutor, on the report, the Lords adopted.

1776. December 3.

A PERSON who had obtained a *cessio*, presented a bill of suspension on juratory caution against a charge given him for payment, by one of his creditors called in the *cessio*. The charger answered, that he meant not to attack his person, but his effects acquired since obtaining the *cessio*, particularly,—for he was a horse hirer,—some horses which he had acquired since decret in the *cessio*. It was replied, that it was by these horses he gained a sober aliment; and that a debtor was, in every event, entitled to a *beneficium competentiæ*. The Lords past the bill on juratory caution,\* in order that the point might be tried as to the after acquisitions: It being understood, that, in consequence of passing the bill, the debtor was to give a disposition *omnium bonorum*, as in juratory caution, in common form.

\* Same in another case reported by Lord Monboddo, 21st November 1777. Same in another case reported by Lord Monboddo, 25th June 1778.

1776. December 3. ISOBEL ROWLEY *against* HER CREDITORS.

In a *cessio bonorum*, law makes no distinction as to the dyvor's habit, betwixt a male and female pursuer; at the same time, it is apparent that the habit prescribed for dyvors, by the Acts of Sederunt, was meant only for males. The procedure in both cases is the same. The above was not mentioned judicially, but occurred in private.

1778. March 4. SIR JOHN DOUGLAS *against* HIS CREDITORS.

SIR John Douglas of Kilhead pursuing a *cessio bonorum* against his Creditors; when it came to be insisted in, there was no appearance for the creditors, and no opposition. Sir John was willing to dispoñe every thing, a bond of annuity which he had from the Duke of Queensberry and his half pay as a cornet not excepted: the first was dispoñed accordingly,—but, as there was no appearance for the creditors insisting for the last, the Lords excepted it from the disposition, (4th March 1778.)

Where a merchant or trader applied for a *cessio*; the first thing commonly demanded, is production of books. If he kept no books, or not regularly, as a merchant ought, he will find it difficult to obtain a *cessio*. And the reason is plain. The Parliament of Ireland have this year, 1778, passed an Act, excluding from the benefit of the Bankrupt Statute, all traders who do not keep regular books of accounts.

Where the pursuer of the *cessio* is imprisoned in the jail of Edinburgh, the Lords, except in very particular cases, and upon special cause shown, refuse to grant commission for taking his oath; but appoint him to depone in Court. Upon a certificate of indisposition, and sometimes even in point of delicacy to the unfortunate pursuer, they grant commission,—but generally not.

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## CHURCH-YARD.

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SIR George Mackenzie, in his *Observations*, p. 293, states this doubt:—  
“*Quer.* To whom a coal found in a church-yard, or trees growing there, will belong;—whether to the heritors, the poor, the patron, or the minister?”

Forbes says, the minister has right to shear the grass in the church-yard, but not to cut the trees. *Inst.* p. 86. *On Tithes*, p. 214, 215.

As to the custom and use of planting trees in church-yards, see Barrington on the Statutes, p. 150.

As to the law of England concerning trees in church-yards, see Neilson's *Rights of the Clergy*, p. 173.

It is said, that there is a decision of the Court of Session, finding that the tree in a churchyard belongs to the heritors. But I cannot find any such collected.

In the Gray Friars, the trees serve for marks to direct the grave-diggers in opening the graves by proper rotation.

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1777. July 4. MAGISTRATES OF GREENOCK *against* JOHN SHAW STEWART OF GREENOCK.

IN an action brought by the Magistrates of Greenock against John Shaw Stewart of Greenock and Heritors of the Parish, concluding that the heritors should make an addition to the present church-yard, the same being insufficient to afford decent burial to the inhabitants and other parishioners;—the Lord Auchinleck, Ordinary, found, “That providing burial ground is a burden which nature, law, and reason lays upon the heritors of every parish; and that