

1786. August 2. WILLIAM DAVIDSON *against* GREGOR GRANT.

*PACTUM ILLICITUM.*

A transaction between a Kirk-Session and a person guilty of Fornication, whereby the latter became bound to pay a sum of money to the Kirk-treasurer, legal.

[*Fac. Coll. IX. 447 ; Dict. 9571.*]

BRAXFIELD. The statute orders fines to be applied to pious uses within the parish. The kirk-session are the guardians of the poor : What should hinder them from taking a voluntary payment, instead of bringing an action?

ESK GROVE. The statute makes no mention of kirk-session : they may be informers, and so may every individual. This business looks like a transaction for an offence.

PRESIDENT. The law has not expressly excluded a transaction of this nature, and there is great expediency in it. Besides, there has been an inveterate and universal practice, which is the best interpreter of the law.

ROCKVILLE. Such compositions afford a fund for the poor : they save people from shame, and they prevent the murder of bastard children.

HENDERLAND. I cannot discover any authority in the statute for such transaction.

ESK GROVE. Should it be thought that the suspender is bound to pay a bill which he has granted, I hope that the general question, as to the legality of such exactions, will remain entire.

On the 2d August 1786, "The Lords found the letters orderly proceeded;" altering the interlocutor of Lord Hailes, Ordinary.

*Act.* W. Miller. *Alt.* W. Honeyman.

*Diss.* Eskgrove, Henderland, Stonefield, Hailes.

*N. B.*—I cannot satisfy myself as to this judgment. It appears to blend ecclesiastical law with civil, and to suppose that, in Scotland, the clergy and the officers of the church may, for *money*, dispense with *discipline*.

1786. November 15. JOHN, DUKE of ARGYLE, *against* JAMES ERSKINE of Alva.

IMPLIED OBLIGATION.

[*Dict. 6573.*]

PRESIDENT. When a proprietor reserves to himself so strong a right, he reserves, tacitly, the power of working ; but still, however, so as not to do any