

the trust;—sustains the pursuers' title to carry on this action; and finds that the defender is bound to denude himself of said trust in their favour, upon being reimbursed of the money laid out by him whereof he is not already indemnified.”

No. 5.

The question having been reported to the Court, an exception was taken to the designation the pursuers had assumed in their action, viz. as in the name of the Associate Congregation of Dundee, subject to the Associate Synod; which having accordingly been struck out, the Court adopted the Lord Ordinary's interlocutor, and sustained the action.

Lord Ordinary, *Monboddo*.  
Clerk, *Gibson*.

For Wilson, &c. *A. Lockhart*.  
For Jobson, *Macqueen*.

R. H.

*Fac. Coll. No. 120. p. 354.*

\* \* For the case of the Associate Congregation of Perth, in which this decision was quoted as a precedent, see Sect. 8, *h. t.*

1791. *November 17.*

The MINISTER, HERITORS, and KIRK SESSION, of DALRY, *against* JOHN NEWAL and Others.

ABOUT the middle of the last century, a large sum of money was bequeathed for the purpose of erecting a free grammar-school in the parish of Dalry. There was a nomination of trustees for managing the fund; but as none of them had ever acted, the administration was assumed by the heritors and kirk-session.

Mr. Newal having borrowed a part of the money, for which he granted his bond to them, they obtained a decree of constitution, and deduced an adjudication against his estate.

It was afterwards objected to the validity of the adjudication, that these processes were incompetent, having been carried on at the instance of the heritors and kirk-session as a public body, whereas, not being incorporated, they ought to have sued individually. But

The opinion of the Court being, that, from the nature of the case, the heritors and kirk-session were necessarily to be considered as a body corporate,

The Lords repelled the objection.

Reporter, *Lord Dreghorn*. Act. *W. Robertson*. Alt. *D. Cathcart*. Clerk, *Menzies*.

S. *Fol. Dic. v. 4. p. 283. Fac. Coll. No. 190. p. 396.*

No. 6.

The heritors and kirk-session of a parish, in respect to a charitable fund under their administration, entitled to sue and defend as a corporate body: