

No 27. year, and so could have no part of the stipend, unless he had continued in his charge till after Whitsunday, conform to an act of Privy Council, which is made upon the resolution of some of the Lords of Session, who were of the Council, to a query made to them concerning vacant stipends, either by the death or dismissal of Ministers, finding, that Whitsunday and Martinmas were the legal terms for Ministers' stipends, and that they had right to a half or a whole as they survived these terms. It was replied, That, by our custom and practice, if Ministers served until the corns were sown, they had right to the half of the stipend; and if they had survived Michaelmas that the corns were separated, they had a right to the whole year's stipend. The Lords by their interlocutor did find, That the pursuer could have no right, unless he had served till after Whitsunday, (which he did offer to prove), in respect of the act of Council standing; but yet it seems that the advice was ill-founded, the sowing of the corns and separation of the crop being the legal terms.

Gosford MS. p. 207.

1673. July 3. SEATOUN against The LAIRD of CRAIGIVAR.

No. 28.
One obliged to perform an act a certain term, is bound to do whatever is requisite for performance.

Craigivar's grandfather having, by his bond, bearing, "for sums of money," obliged himself to cause a servant of his to subscribe a translation of a bond due by Seatoun of Disblair, at a certain term, mentioned in Craigivar's bond, which is *in anno* 1633, which bond doth also bear, "that Pitmeddan had received Disblair's bond, and the assignation;" Mr. Alexander Seatoun, now of Pitmedden, as representing his grandfather, by progress, pursues Craigivar, as representing his grandfather, for payment of the sums contained in Disblair's bond, seeing the translation thereto was never granted until Disblair became altogether insolvent. The defender alleged, Absolvitor, because his good-sir was neither *in culpa* nor *in mora* in procuring the translation, unless it were alleged, that Pitmedden had produced to him the bond and assignation, which is acknowledged to be received by him, and without which the translation could not be drawn. It was answered, That Craigivar having obliged himself to obtain the translation at a certain term, dies *interpellat. pro homine*, and he was *in mora* after the term, unless he had required Pitmedden to produce the bond and assignation, and had not done the same; for being obliged for a deed at a term, he was obliged to do all things requisite for performance of that deed; and it cannot be thought but that he hath kept a double or minute of the bond and assignation, for forming the translation, seeing his bond is not granted conditionally upon production of the assignation,

The Lords repelled the defence, and found the pursuers not obliged to offer the bond and assignation, but that the defender, being obliged to perform at a term, should have demanded the same, if he had had need of it.

Stair, v. 2. p. 220.