

there are just as many as there are instances of sons going abroad, or of daughters being married during the subsistence of a marriage wherein conquest is provided. Were it otherwise, a father must only give payments in part to his children, and so leave law-suits behind him, both as to the right of the child who gets, and of the child who does not get the provision.

On the 26th July 1768, The Lords found that the words of Mrs Marjory Sinclair's contract of marriage, in 1748, import a renunciation and discharge of the half of the conquest provided to her by her father's contract of marriage in 1722; and, consequently, must restrict her sister Katherine's share of said conquest to the other half, and, therefore, prefer the heirs of line of Southdun to that share of the conquest now in question, which would have fallen to Marjory, if she had not been excluded by her contract of marriage.

On the 25th November 1768, they adhered, altering Lord Auchinleck's interlocutor.

Act. G. Wallace, A. Lockhart. *Alt.* D. Rae, R. Dundas. *Diss.* Auchinleck, Barjarg, Monboddo, Strichen, Alemore, (not present at last hearing,) President, Kaimes, (*non liquet* at last hearing.)

1768. December 1. ROBERT ARTHUR *against* MESSRS HASTIE and JAMIESON.

SALE.

Interest of consignee in goods shipped to him from abroad, and of which the bill of lading has been transmitted to him.

[*Faculty Collection, IV.* p. 165; *Dict.* 14,209.]

MONBODDO. I doubt as to the principle of the interlocutor and its consequences. The goods were put into the hands of the shipmaster, in order to be delivered to the Glasgow merchants; still, however, on the risk of the Virginia merchant: but the rule, *res perit suo domino*, admits of various exceptions. Supposing no transfer of the property, the consequences drawn in the interlocutor will not hold. If I have a personal right to a subject, and no more, still this will be a burden on the subject after arrestment.

PRESIDENT. No arrestment can carry the property of another man.

GARDENSTON. If remittances of goods by foreign merchants were liable to arrestments, the consequences would be dangerous. I wish for an inquiry into the practice of other nations, especially England. I hold that a consignment of goods for payment is, in reality, an assignation. If there had been a formal conveyance and assignation, there would have been no question; though, in strictness of speech, the property was not thereby transferred. I do not see the difference between that case and the present.

PRESIDENT. That hypothesis is not consistent with the tenor of the contract between the parties.

GARDENSTON. I do not go upon that contract, but upon the bills of loading and the letters.

BARJARG. This private contract cannot have effect against the diligence of third parties. There was no antecedent obligation on the Virginia merchant.

PRESIDENT. It would be dangerous to alter this interlocutor: it would be opening too wide a door for frauds and undue preferences.

KENNET. The tobaccos were not the property of the Glasgow merchants, and would not have been their property, even if they had been delivered. The case of *M'Farlane* was different from this; for there he had previously wrote home to a trustee that he was to send the goods for payment of his creditors.

On the 29th November 1768, The Lords found that there was no sufficient evidence that Archibald Dunlop was divested of the ship and cargo, in favour of Hastie and Jamieson, and, consequently, that the same was liable to be affected by the diligence of his creditors; and, therefore, preferred Robert Arthur upon his arrestment, "adhering to Lord Pitfour's interlocutor."

Act. R. Cullen. *Alt.* A. Lockhart.

Non liquet, Monboddo.

Vide infra, 1st March 1770.

1768. December 1. CREDITORS of GEORGE PITCAIRNE *against* SAMUEL FOGGO.

USURY.

A commission of a half *per cent.* may be charged by Bankers.

[*Dictionary*, 16,433.]

MONBODDO. If Foggo's debt is good, so also is his diligence. *A pari passu* preference has an appearance of equity, but we have no power to create it.— My doubt is upon the statute against usury. I am glad that the pursuers have passed from penalties; but they insist that the debt itself be set aside, upon two grounds: 1. The charge of commission. 2. The charge for drawing and re-drawing. If a man, under pretence of commission, or other practice, takes more than five per cent. he is within the statute of usury. The merchants, in their report, have made a distinction which I cannot make, between bills and accounts. A banker's profit is great without commission; he lends at five per cent. while he borrows at four per cent. The charging Pitcairne with the expenses of drawing and re-drawing is also usurious.

AUCHINLECK. My brother is too Jewish in his notions of usury. Transactions among merchants are carried on in a different form from those of other men and the rest of the world. It is absolutely necessary, for carrying on transactions in trade, that there be something of the same nature as here. Many people have a great benefit by this method of dealing; business cannot be carried on without it. It enables men to borrow no more than they have occasion for, and to pay in sums, however small. The commission here, in the in-