

JUSTICE-CLERK. I think the eviction must be held as taking place from the first interlocutor of Lord Minto, Ordinary, restricting the adjudication to a security. From the time of that interlocutor, acquiesced in, the purchaser could not expect to continue in possession: the value of the subject must be estimated as at that time.

AUCHINLECK. After that the adjudication had been restricted to a security, it was impossible that the parties should ever suppose that there was a right of property. Suppose that there had been a decret of reduction, without the word *decern*, there could have been no extract. Nevertheless *bona fides* would have ceased.

KAIMES. After the interlocutor restricting to a security, the purchaser had the subject as a security for his debt, and therefore had no concern in the rise of the rents.

Lord Hailes, Ordinary, found "that the pursuer ought not to profit by the casual rise in the value of houses at Dundee, during the unsuccessful litigation which he and the defenders jointly maintained in the former process; that the eviction of the subjects is to be held as taking place at the date of the sequestration, and that the pursuer is entitled to the value thereof as at that period."

On the 18th December 1769, the Lords altered in part, and found eviction as at the date of the interlocutor restricting adjudication.

Act. J. Douglas. Alt. J. M'Laurin.

1769. December 18. HENRY MILLER, Minister of the Gospel at Neilston,
against THOMAS CRAIG.

MANSE.

Found not lawful to assess Tenants for the expense of leading materials to be employed in building a Manse; it being held that the burden of building the Manse lay entirely upon the Heritors, which term does not include Tenants.

THE manse of Neilston having become ruinous, the heritors assessed themselves for the purpose of building a new one; and they also assessed the tenants and possessors of land within the parish to lead the materials for building the manse, in proportion to their respective possessions or valuations. The heritors also appointed a committee of their number, with power to compound with the tenants for the carriages at proper rates. To these proceedings the presbytery interposed their authority. Thomas Craig, a tenant in the parish, being charged to pay a certain sum, as the assessed value of his proportion of the burden laid on the tenants, presented a suspension of the charge, on the ground that the burden of building the manse lay upon the heritors, under which term tenants were never held to be included.

"The Lords suspended the letters, and found expenses due."

The following opinions were delivered :

HAILES. Here an attempt to impose a new burden on tenants. Tenants are in use of assisting the heritors in leading the materials for building the manse, but they are not bound to assist. Great pains has been taken to prove that, by heritors, the law meant tenants. The minister ought to have remembered the Act 1690, which vests the power of choosing a minister in the eldership and heritors. No one ever imagined that the Act comprehended tenants. There are statutes in the reign of Charles II. which make heritors liable for their tenants. The words are totally distinct : as much as heritable and moveable.

AUCHINLECK. The misfortune of the charger's plea is, that it is not only without law, but contrary to law. The law would never have imposed such a constant burden on persons having an uncertain and temporary possession. Expenses ought to be given to the suspender.

On the 18th December 1769, " The Lords suspended the letters, and found expenses due ;" adhering to Lord Ellick's interlocutor.

Act. D. Dalrymple. Alt. J. M'Laurin.

1769. December 18. GEORGE GRANT *against* DAVID CRUIKSHANKS.

BILL OF EXCHANGE.

Bill, blank in the Drawer's name, found not to be effectually transmitted by delivery to a Creditor of his, who inserted his own name as drawer.

[*Fac. Coll. V. 25 ; Dict. Appendix I.—Bill of Exchange, No. 1.*]

MONBODDO. This is a blank writ in terms of the statute 1696.

JUSTICE-CLERK. A bill is made payable to me or order. If this bill may be transmitted from hand to hand, and only filled up in the drawer's name when necessity requires, numberless frauds, to the prejudice of lawful creditors, will ensue.

AUCHINLECK. The principle of my interlocutor was, that I do not incline to give new privileges to bills.

On the 18th December 1769, " The Lords found that, as this bill was accepted as payable to Low, the intended drawer, Low's giving the bill to George Grant, his brother-in-law, that he might sign as drawer, was not a habile method of transmitting the contents to George ; and therefore preferred Donald Cruikshanks, on his arrestment, for the two bills which Low owed him ;" adhering to Lord Auchinleck's interlocutor.

Act. A. Wight. Alt. J. M'Laurin.