1770. *July* 20. THOMAS FINDLAY *against* THOMAS MORGAN.

SERVICE OF HEIRS.

An infeftment taken upon a Precept of *Clare Constat*, to the next Heir of the person last seized in liferent, and to his Son in fee, erroneous; and an adjudication laid against the Son, as vested in the estate upon that title, reduced.

[*Faculty Collection, V. p.* 92; *Dictionary*, 14,480.]

COALSTON. The interlocutor is agreeable to the feudal law, and to the noted case of *Landales*.

AUCHINLECK. My doubt is as to what has not been urged by the Lord Ordinary, that the infeftment, 1709, however erroneous, is now secured by prescription.

On the 20th July 1770, "The Lords found that the infeftment upon the precept 1709 was erroneous;" adhering to Lord Kaimes's interlocutor: but remitted to the Ordinary to hear parties as to prescription.

Act. R. M'Queen. *Alt.* A. Wight.

1770. *July* 24. ROBERT SCOTT of Logie *against* MRS MARGARET SCOTT.

PRESUMPTION—HUSBAND AND WIFE.

***Donatio inter virum et uxorem*, and implied revocation thereof by a posterior deed.**

[*Fac. Coll., V.* 95; *Dictionary*, 11,367.]

HAILES. The defender makes a merit of two things: *first*, That she induced her husband to settle his estate on the pursuer: this was a matter in which she had no business to meddle. *Secondly*, That she did not abstract the deeds in her husband's repositories: this was a matter wherein, if she had acted otherwise, she might have been set on the pillory. I do not see any delivery at all, or any proper donation. Logie amused himself in making deeds,—while undelivered, they were nothing. It would be dangerous to say, that, when a donation is executed by a husband to a wife, the husband's repositories are to be considered as the wife's repositories; for this would be to make a *donatio inter virum et uxorem* necessarily delivered whenever made.

AUCHINLECK. The defunct has been very uxorious. Some of the deeds executed by him were most irrational, particularly the liferent which he granted of the mansion-house. When he came to make a final settlement, he assigned the maills and duties to his disponee, and he reserved certain settlements in his

wife's favour. I cannot think that all the deeds in his repositories are to be considered as still subsisting.

PRESIDENT. The deed of settlement is the *ultima voluntas.* Logie may have made various destinations before, but that is the final result of all his destinations.

COALSTON. If the last settlement had kept in generals, without mentioning any particulars, there might have been difficulty; but here there is a special reservation of all that Logie meant to bestow on his wife.

On the 24th July 1770, " The Lords sustained the reasons of reduction."

Act. A. Lockhart. *Alt.* J. Scott. *Reporter,* Gardenston.

1770. *July* 24. JOHN THAINE *against* SIR WILLIAM MONCRIEFFE.

ADJUDICATION—MULTIPLEPOINDING.

Process of Adjudication cannot be stopped or delayed by a Multiplepoinding raised by the debtor, who was doubly distressed for the debt adjudged for.

[*Faculty Collection, V.* p. 99; *Dictionary, App. I. Adjudication, No.* 4.]

PITFOUR. This is a first adjudication: no damages can arise from delay,—How can the debtor have a penalty inflicted against him, while there is a multiplepoinding depending?

COALSTON. The debtor is doubly distressed: it is *in dubio* whether Thaine is preferable or not. The debtor is not *in mora,* and therefore why adjudge? The practice of the Court reserves objection *contra executionem;* but that will not apply to a first adjudication.

PRESIDENT. The *mora* is on the part of the debtor; for the creditor has done nothing to hinder his payment. Why should he be stopped from taking legal execution in order to secure payment.

PITFOUR. The distress arises from the pursuer; for he does not clear up his own preference.

GARDENSTON. If he who seeks adjudication is not a true creditor, he will have his labour for his pains; if he is, he will make his diligence good.

JUSTICE-CLERK. It is not difficult to rear up objections, and to bring a multiplepoinding. This will not stop the course of the law. If, in discussing the multiplepoinding, it be found that the creditor has adjudged for too much, he himself will be the loser.

AUCHINLECK. The bond is dated in 1765. It is hard to keep so much money dead. The interlocutor is right.

KAIMES. A suspension only stops personal diligence, not real. This may answer the decision 1707, *Tod.* How can a man have his estate adjudged,