

1773. June 22. JOHN SCOTT and OTHERS *against* JOHN WILSON.

PARENT AND CHILD—IMPLIED POWER.

The nomination of a trustee in a deed executed by a man and his wife for behoof of their Children, is revocable by the father, as their administrator-in-law, though the deed should contain no express power of revocation.

[*Pac. Coll.*, VI. 175 ; *Dictionary*, 6585.]

GARDENSTON. The father did not mean to divest himself of the power of administration. This naming tutors and curators can only be in the event of himself dying.

AUCHINLECK. The father has power to revoke the whole.

HAILES. According to Wilson's argument, his powers are such that he may send one of the children to sea, although the father should propose to give him an academical education.

COALSTON. Two things are confounded by Wilson, which in themselves are distinct. The deed, *quoad* the children, is irrevocable ; but the father and mother may alter the trustee. The children, who are minors, may uplift with consent of their administrators.

MONBODDO. A father cannot assign away his paternal power, or renounce his rights of administration. This is not the case here ; it respects a particular sum. If the father can name a new trustee, he can uplift the money and take the administration upon himself.

On the 22d June 1773, " The Lords found the letters orderly proceeded ;" altering Lord Monboddo's interlocutor.

*Act.* R. M. Queen. *Alt.* A. Lockhart.

1773. June 23. JOHN ARBUTHNOT *against* ANN ARBUTHNOT.

HEIR AND EXECUTOR.

It is the nature of the obligation granted for the price of lands purchased at a Judicial Sale, and not of the debts ranked thereon, that regulates the relief *quoad* these debts, between the Purchasers, Heir, and Executor.

[*Faculty Collection*, VI. 180 ; *Dictionary*, 5225.]

AUCHINLECK. The debt appears to have been moveable *quoad debitorem*, and therefore the interlocutor is right.

KAIMES. James Arbuthnot purchased an estate. The price was not paid

up during his life. The heir takes the estate. The executor must pay up the price.

GARDENSTON. This is the same case as if I should buy an estate by a private bargain or a voluntary sale. If I have not paid up all the price during my life, it must be made up by my executor.

PITFOUR. The hardship mentioned by Mrs Ann Arbuthnot, (at the end of her petition,) occurs every day. It particularly occurred, not many years ago, in the case of *The Children of M'Kenzie of Kilcowie*.

PRESIDENT. The bond is personal altogether, though granted for extinguishing of heritable debts.

On the 23d June 1773, "The Lords repelled the defences, and found Mrs Ann Arbuthnot liable *secundum vires inventarii*."

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

1773. June 24. COLONEL CHARLES CAMPBELL of Barbreck *against* JAMES M'NEIL and JAMES M'CONOCHY.

#### FREEHOLDERS.

Equivalent to a refusal to enrol, where the only two Freeholders who attended a Michaelmas meeting evaded taking cognisance of a claim for enrolment which was duly lodged, and moved to them by the clerk, on the pretence that neither the claimant, nor any person for him, appeared to support his claim; and that a motion made to them by another Freeholder, while they were in the court-room, to take the claim under consideration, was too late.

[*Dictionary*, 8849.]

AUCHINLECK. I never saw so gross a thing done by any persons pretending to the name of gentlemen.

HAILES. It would be a very convenient doctrine, for any set of freeholders who are all of a side, were they permitted to hear, in silence, any claim made, without either granting or refusing, and then to plead that they did not *refuse* to enrol; and, therefore, that the law gives no remedy. This neither is nor can be the sense of the statute. It is a *denegatio justitiæ*, and a ground of advocacy, if a Sheriff permits a process to lie before him unadvised, although he does not refuse to give judgment.

On the 24th June 1773, "The Lords found that the freeholders had done wrong in not enrolling Colonel Campbell; and therefore ordained him to be enrolled, and found expenses due."

*Act. Ilay Campbell. Alt. W. Campbell.*