

PRESIDENT. I do not so much as see a practice proved. I will not receive the evidence of the Judge-Admiral and of his procurators, to prove a practice which will destroy the officers of other Courts.

JUSTICE-CLERK. There are no examples of this practice, but a very few within these five or six years, and these, too, litigated; which shows the thing to have been a novelty. The diligence itself is anomalous. I cannot conceive any practice more hurtful to commerce and the credit of merchants, than one which may lock up their effects to any extent at the instance of they not who. If I saw a fixed practice, I would suppose that the nation was wiser than I, and had acquiesced in it; but I see nothing of this kind.

On the 8th July 1773, the Lords, in respect that Brown's arrestment was not in a maritime cause, and was executed before creating a dependance by citation of the common debtor, preferred Neil's, which was regularly executed; adhering to their own interlocutor of the 26th February 1773, and to Lord Stonefield's interlocutor.

Act. R. Cullen. Alt. J. M'Laurin.

1773. July 14. ALEXANDER GORDON of Whiteby *against* GENERAL JAMES ABERCROMBIE and OTHERS.

MEMBER OF PARLIAMENT.

Competency of producing new evidence in the Court of Session, to support a claimant's title.

[*Faculty Collection, VI. 165 ; Dictionary, 8876.*]

HAILES. My difficulty as to the receiving of new evidence is upon the judgment in the case of Captain Stewart, respecting the Laird of Wevov's lands. There the Court was much moved by a judgment of the House of Peers in the case Sir John Gordon; and it was said that that judgment showed the enix will of the House of Peers, that the evidence should originate before the court of freeholders, and that new arguments might be produced before the court of review, but not new evidence.

AUCHINLECK. All that is incumbent on a claimant is to produce charter, sasine, valuation, or evidence of old extent. If any objection is made, he may support his claim by a reply, and then produce evidence, which only the objection made necessary.

MONBODDO. Evidence in support of evidence, before the freeholders, may be produced.

ALEMORE. In matters of this kind, a distinction is to be made. If the claimant produce valuation, &c., he complies with the Act; but, if there is any ambiguity, he ought to come prepared to clear up the ambiguity, because he might have foreseen the objection thence arising.

[This rule seems a good one ; but I should think that, in the present case, it goes to the inadmissibility of the new evidence, for the ambiguity in the titles produced was obvious.]

PRESIDENT. I had once formed to myself a system of political law, but it has been shaken partly by the judgments of this Court, partly by the judgments of the House of Peers. I still wish to recur to my old system. I think that the doctrine of the reclaiming petition would destroy the whole spirit of the law. We are not to judge *prima instantia*. Grounds of claim must be produced before the freeholders ; but still opportunity must be given to answer objections, especially as absent freeholders may object. I also doubt of the competency, after decret had gone out, upon the proof before answer being allowed.

On the 14th July 1773, the Lords found the production of new evidence competent.

Act. Ilay Campbell, &c. *Alt.* Cosmo Gordon, &c.

1773. July 16. ROBERT ARTHUR *against* JOHN CALLIN.

ARBITRATION.

Reduction of a Decree-Arbitral.

[*Faculty Collection*, VI. 205 ; *Dict.* 667.]

HAILES. The proof is competent. Arthur's objection to the decret-arbitral is, that the arbiters have left a point to be decided by an after probation. Callin answers, The arbiters did this at Arthur's special request, and this fact will be proved by the oaths of the arbiters. Arthur cannot be allowed to object to his own deed : he is barred *personali exceptione*. The purpose of the proof is singly to make good the *personalis exceptio*.

PRESIDENT. I will neither support nor overturn a decret-arbitral by the evidence of witnesses ; but I will allow a fact to be proved concerning a decret-arbitral, in order to explain the *res gesta*.

On the 16th July 1773, the Lords found that the arbiters may be examined ; adhering to the interlocutors of Lord Auchinleck.

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

1773. July 16. AGNES WATSON *against* MARY RAE.

TUTOR AND CURATOR.

[*Fac. Coll.*, VI. 207 ; *Dictionary*, 16,369.]

HAILES. There is no contrariety in the decision of *Little Libberton*, as re-