

1775. February 4. JOHN SHARP, Pursuer of *Cessio Bonorum*, against His CREDITORS.

CESSIO BONORUM

Denied to a pursuer as not being bankrupt, so far as to entitle him thereto, although rendered bankrupt in terms of the Act 1696.

[*Fac. Coll.*, VII. 23 ; *Dictionary*, 11,785.]

HAILES. This is a new case. The debtor says that he is solvent, not insolvent. His reason for pursuing a *cessio*, instead of paying his debts, is, that, if he were to sell his lands just now, it would not yield so high a price as it would have done when land was wont to go at a higher price. But what then? Although his land may not sell at forty years' purchase, it may sell at twenty-five, and that will do more than satisfy all his creditors.

PRESIDENT. *Cessio bonorum* is a *fleBILE beneficium* to poor people who cannot pay. They must prove how they came to be *lapsi bonis* ; but here Sharp says that he is solvent.

ELLOCK. Were we to admit this plea, every man in Scotland might pursue a *cessio*, and so obtain a personal protection.

AUCHINLECK. This is just as if a man, not choosing to pay his debts, should appoint a factor, and desire his creditors to seek payment from his factor.

JUSTICE-CLERK. The common-law, the statute acts of sederunt, and practice, uniformly hold that they only are entitled to a *cessio* who cannot pay. The direct contrary is here ; Sharp does not so much as say that he has ever offered his estate for sale.

On the 4th February 1775, The Lords found that the pursuer was not entitled to the benefit of the *cessio*.

Act. R. M'Queen. Alt. H. Erskine.

1775. March 8. COALSTON.—The *cessio bonorum* is introduced from humanity. I would never limit it by interpretation. The first reason given for denying the *cessio* is, that this man has failed in his circumstances through extravagance. This is not good, although it may authorise the Court not to dispense with the habit. The *second* reason is, that he is not bankrupt, having a land estate. This is not good, for the pursuer is willing to grant a general disposition. It is sufficient to entitle a man to a *cessio* that he cannot instantly pay his debt: he may have funds, though not ready. From the nature of old Sharp's settlements, it will be hard for young Sharp to raise money.

PRESIDENT. How can a man be entitled to this benefit if he says that he is worth L.5000, and is imprisoned for L.500? The creditors cannot bring his estate to a sale, for he is not bankrupt. The creditors say, "Sell the estate."

“No,” says the petitioner, “take my estate, and be my factors, answerable to me.”

GARDENSTON. Although a man wantonly and extravagantly dissipates his fortune, he may still have the *fleBILE remedium*, though with the disgrace of the habit. But I do not see how there can be a *cessio bonorum* when a man does not instruct that he is *lapsus bonis*. Every single creditor is not bound to have patience while there is a fund ready for payment. The rights of creditors are sacred in our law.

JUSTICE-CLERK. If Sharp had shown that he had done every thing in his power, if he had produced an advertisement offering to borrow L.200, or L.300, or if he had proposed to sell a small part of his estate, I should have listened to him.

PITFOUR. Supposed erroneously that Sharp was under an absolute prohibition as to selling his estate, and on that supposition was for altering the interlocutor.

MONBODDO. If the pursuer says that he is willing to hold himself a bankrupt, and absolutely gives up his estate, it is well. But, instead of this, he says “I will pay you with a trust-right.”

On the 8th March 1775, The Lords found the pursuer not entitled to the *cessio bonorum*; adhering to their interlocutor of 4th February 1775.

Act. A. Rolland. Alt. H. Erskine.

1775. March 10. JOHN GILLON, Esq. *against* KATHERINE MUIRHEAD and HUSBAND.

TACK.

Tack granted for a term of years to a man and his wife, and longest liver, and the heir of the longest liver, secluding assignees, the wife surviving and continuing possession of the farm,—Whether does her subsequent marriage irritate the tack?

[*Faculty Collection, VII. 79; Dict. 15,286.*]

MR Alexander Lockhart of Covington, Lord Probationer, Reporter. This question is now of importance, though in former days it may have been of little moment. Tacks were *formerly* granted for a short endurance; *now* for many years. When the subject is small, and the tenants propose to erect buildings, tacks are granted to endure for many centuries. If a tack becomes void when the female heir marries, after succeeding to the tack, or when the tack devolves to a female heir already married, the industry of a hundred years may be swept away by the landlord in one day. I think that our elder lawyers have been misunderstood by our more recent lawyers, and hence that the principle has been received in books, but not in the practice of the nation, “that a tack falls on