

render it inextricable. When an estate is conveyed to a trustee, as in this case, what is the purpose? It is to have the whole sold and the price divided. This only gives a *jus crediti* to each creditor. The right of each creditor is a personal right against the trustee. It is impossible that an adjudication can carry this; it must be carried by arrestment. This is illustrated by the case of copartners having houses and heritable bonds. Their creditors cannot affect such subjects by adjudication: they must be affected by arrestment. The principle applies to the one case as well as the other.

KAIMES. I misunderstood the fact, and supposed the arrestment to have been laid on by a creditor of Dickson.

ALVA. I do not understand an arrestment of a thing that is not *in medio*. This subject is not *in medio*. He who wishes to arrest must wait till the subject comes to be *in medio* by a sale.

COVINGTON. A claim *ad factum præstandum* is not arrestable: but the claim here is something more,—it is for payment of the money. The personal claim of Hepburn would have gone by a confirmation: why may it not be carried by arrestment? Many debts are arrestable, although not actually due: thus, arrestments may be used of rents *currente termino*.

On the 25th February 1780, “The Lords sustained the arrestment, and found it effectual to carry the heritable and the moveable subjects.”

Act. R. Corbet, A. Crosbie. *Alt.* A Ferguson, Ilay Campbell.

Diss. Alva, Westhall; *non liquet*, Covington, Ellick.

Hearing in presence.

1780. February 19. ROBERT MONTGOMERY against GEORGE FERGUSON.

MEMBER OF PARLIAMENT.

[*Folio Dict. III. 428; Dict. 8820.*]

BRAXFIELD. The catholic right is a blanch duty. *That* cannot be divided. The vassal is not bound to pay *part* of a penny Scots; and, if so, the superiors are not in possession.

ELLOCK. The possession is just as good as the possession of any blanch superiority.

MONBODDO. The freeholders had not only power, but right to inquire into the possession. When it appears *ex facie* that there neither was nor could be possession, the freeholders did right to refuse enrolment.

COVINGTON. My doubt is as to the power of the freeholders to challenge.

ALVA. The freeholders are entitled to inquire whether the subject claimed on exists.

KENNET. A superior is not entitled to impose a number of superiors on his

vassal. The question is, Whether this can be held to be *jus tertii* as to the freeholders? I incline to think that it is not: the superiors must show that their feudal right is good. Sir John Anstruther does not consent, but, on the contrary, objects. Besides, here was a thing which could not be divided.

PRESIDENT. I could never bring myself to think that the subtle arguments as to *jus tertii* were solid. The House of Lords has gone far. I will go as far, but no farther, in support of fictitious votes. Has the House of Lords ever said that the vassal may not object? *Here* he does object. It is admitted that Lord Eglinton did an illegal thing, but that it may be good if the vassal consents. Now the vassal does not consent, but opposes. The objection to the splitting the blanch-holding is also strong. The charter does not convey the lands.

On the 29th February 1780, "The Lords dismissed the complaint."

Act. A. Wight. *Alt.* Ilay Campbell.

Reporter, Stonefield.

Diss. Elliock; *non liquet* Covington.

1780. June 21. ROBERT ANDERSON, *Charger*, against WILLIAM KER, Commissioner for the DUKE of ROXBURGH, *Suspender*.

HYPOTHEC—TACK—SEQUESTRATION.

By tack, dated April 1774, the Duke of Roxburgh let the farm of Plenderleith to John Wright, excluding assignees and subtenants, for seven years from Whitsunday 1774. The tenant becoming embarrassed, he, on 11th April 1780, applied for and obtained a sequestration of his estate, under the bankrupt statute of 12th Geo. III. c. 72; and the charger was appointed factor. On 25th April 1780, the charger intimated these circumstances to the suspender, and stated at the same time that Wright was to remove at Whitsunday next, and to renounce his lease, and that he, the factor, meant to dispose of the whole stocking on the farm, which was a sheep-farm. These measures were opposed by the suspender, who, upon a roup being advertised for the 22d of May, applied, by bill of suspension, for an interdict to stop the sale.

PLEADED by the suspender,—*Imo*, It is implied in a tack that the farm must be properly stocked by the tenant, that it may be properly cultivated, and also that the landlord may have security for his rent; Ersk. 268; Stair, 2. 9. 31; Bankt. 2. 9. 21.; *Randiford*, February 1623. Independently, therefore, of his hypothec altogether, the landlord is entitled to prevent the tenant from displenishing his farm by disposing of his stock *per aversionem* during the lease. *2do*, Even in virtue of the hypothec alone, the landlord may prevent the stock, as a *universitas*, from being entirely carried off. Although the stocking is said to be hypothecated only for one year's rent at a time, yet the effect of it is the same, in reference to the present question, as if it were more extensive; because the subject of the hypothec may be detained by a sequestration for the current year's rent till the conventional term of payment arrives, when, and no