

and to say, after the lapse of twenty years, "These are the warrants of your decret." The creditor may answer, that the warrant produced is not the warrant of the decret on which he founds.

On the 16th January 1782, "The Lords found that the pursuers cannot, after the lapse of twenty years, object to warrants not produced by the defender;" adhering to the interlocutor of Lord Monboddo.

Act. D. Rae. *Alt.* Ilay Campbell.

1782. *January 23.* HUGH WATT *against* HENRY RITCHIE.

INSURANCE.

A Ship, whose name had been lately changed, having been insured under the former one, such Insurance was found ineffectual.

[*Fac. Coll. IX. 43 ; Dict. 7074.*]

HAILES. It is singular that the two policies differ in all particulars,—in the name of the ship, in the voyage, in the parties concerned,—and that the only thing in which they agree is in the name of the master, which the pursuers hold to be a circumstance of no moment. How can the underwriter be liable in both policies, as on one ship and cargo, when he had all reason to suppose that he was insuring *one* ship and the cargo of another?

GARDENSTON. If the insurer was in the knowledge of the ship being the same, I should doubt; but that is not alleged, and indeed seems not to have been the case.

On the 23d January 1782, "The Lords sustained the defences, and assolied the underwriter;" adhering to Lord Westhall's interlocutor.

Act. R. Cullen. *Alt.* Ilay Campbell.

1782. *January 29.* WILLIAM FULLARTON and OTHERS *against* ARCHIBALD STEWART M'ARTHUR.

BILL OF EXCHANGE.

A Bill was made payable after the decease of the Drawer: he lived thirty-seven years after it: Action refused on it.

[*Fac. Coll. IX. 45 ; Dict. 1408.*]

BRAXFIELD. This is not a legacy, but a right altogether anomalous.

PRESIDENT. Whenever a writing in the form of a bill is employed in things foreign to commerce, it ought not to have any countenance from the law. Were it otherwise, a door would be opened for numberless forgeries.

On the 29th January 1782, "The Lords sustained the objections to the bill;" adhering to the interlocutor of Lord Gardenston.

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

1782. *February 13.* CORNELIUS LOYD *against* CREDITORS of PATERSON.

RANKING AND SALE—WARRANTICE.

Whether deduction be given on account of a partial Eviction, when the Subject has been valued, and sold *in cumulo*?

Whether any distinction be made in this matter between a Sale pursued by an Apparent Heir and one at the suit of Creditors?

[*Faculty Collection, IX. 52; Dict. 13,334.*]

BRAXFIELD. There is no warrantice in a judicial sale. But if a person purchases, through error or deceit, he may have a remedy, by giving up the purchase; but he is not entitled to say, I will hold so much of the bargain, and have a deduction on account of the rest.

PRESIDENT. This is a lot sold by a slump bargain. How can we make a distinction between one part of it and another?

On the 13th February 1782, "The Lords decerned against Loyd for payment of the whole lot;" adhering to the interlocutor of Lord Alva.

Act. D. Rae. *Alt.* A. Elphinston.

1782. *February 8.* HUGH MILLIGAN and Co. *against* ALEXANDER BARNHILL.

COMMONTY.

Found that a brewhouse, with the utensils, of which the half had been sold *pro indiviso*, was such a subject, as that the action *de communi dividendo* was applicable to it, No person can be compelled to remain longer *in communione* than he chooses.

[*Fac. Coll. IX. 51; Dict. 2486.*]

MONBODDO. When a subject is indivisible, any proprietor may insist for a roup, both by the civil law and according to the opinion of our lawyers.