

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.

BRAXFIELD. It is founded in the common law of Scotland, that no man can be bound to remain in any general or particular communion longer than he chooses. It is said that, by the common law of Scotland, commonties could not be divided; but it does not follow that common property could not be divided. Commonties were established, by the will of the proprietor, for the joint use of many. When improvements began to be introduced, it was considered that to suffer land to be enjoyed in common was an abuse of property, and this gave rise to the statute 1695.

ALVA. The parties have entered into a community: no one of them can depart from it.

GARDENSTON. There is no subsisting copartnery here.

PRESIDENT. How can a better rule be followed than that which, from a similar necessity, is followed with respect to a ship?

On the 8th February 1782, "The Lords repelled the objection."

Act. J. M'Laurin. *Alt.* A. Wight.

Reporter, Kaimes.

Diss. Alva.

1782. February 20. THOMAS GEMMIL *against* Colonel JOHN WALKINSHAW
CRAWFURD.

JURISDICTION.

An Action of Damages, founded on an Acquittal in the Court of Justiciary, is not competent before the Court of Session.

[*Fac. Coll. IX. 56; Dict. 7422.*]

It was the opinion of the Court, that no expenses could be demanded in this Court on account of a cause which had been tried in the Justiciary Court, and that the party supposing himself to have been injured ought to have applied to the Court in which the injury is done.

Act. G. Ferguson. *Alt.* S. Boswell.

Reporter, Alva.