

cuted: but *here* there is a distinction,—the house *is* built, and the materials have been adapted to the building. If they do not go to the heir, they will be lost to every one else, for they are fitted to the house, *opere manufacto*; and so the subject of the succession would be diminished. There is no danger of leaving things ambiguous. If the rule of law is, that every thing moveable goes to the executor, every partition taken down will go to the executor. If the proprietor dies before such a partition is replaced, that indeed would make the law ambiguous.

On the 25th February 1783, “The Lords found that the materials destined for the house fall and belong to the heirs-at-law;” varying the interlocutor of Lord Alva.

*Act.* J. Morthland. *Alt.* R. Dundas.

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1783. *March 1.* JAMES MURRAY of BROUGHTON, and OTHERS, Creditors of JAMES LAURIE of REDCASTLE, *against* JOSEPH M'WHAN.

*PACTUM ILLICITUM.*

Combination of intended Offerers at a Public Sale.

[*Faculty Collection, IX. 164; Dict. 9567.*]

BRAXFIELD. Here is an unlawful combination to prevent the exposor from getting the full value of the subject. The subject ought to be set up again to sale.

MONBODDO. There is no roup when there is no competition of bidders. [This proposition is crude.] The *fervor licitantium* is prevented by such combination.

PRESIDENT. Over and above the price paid, there is here a sum of money given, which would have gone to the creditors had the sale been fair.

On the 1st March, 1783, “The Lords, on a summary petition, found that the combination was illegal, and that the sale must be set aside: found the respondents liable in expenses of process, and also in the expenses to be incurred in the new sale.”

For the petitioners,—Ad. Rolland. *Act.* Ilay Campbell.

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