

to be extended to other cases: it is an *annus continuus*, not *utilis*. Were it otherwise, the Act 1661 also might be in danger.

On the 13th November 1783, "The Lords refused the bill of suspension;" adhering to Lord Stonefield's interlocutor.

*Act. E. M'Cormick. Alt. G. Ferguson.*

1783. November 19. JAMES ROBERTSON BARCLAY and OTHERS *against* WILLIAM LENNOX of Woodhead.

BANKRUPT.

Infertment is reducible under the Act 1696, though the warrant be anterior to the right of the creditor challenging.

[*Faculty Collection, IX. 195; Dictionary, 1151.*]

JUSTICE-CLERK. The law would be set loose were such excuses received. The judgment of the House of Peers, in the case of *Erskine*, proceeded on this principle, that an insolvent person ought not to be allowed to give partial preferences; and the other alternatives ought to be liberally interpreted.

BRAXFIELD. We ought not to be too critical in interpreting this act, for it has no effect unless there be a bankruptcy.

On the 19th November 1783, "The Lords found sufficient evidence that Mr Robertson had absconded, and fell under the description of the Act 1696;" and therefore sustained the objection.

*Act. C. Hay. Alt. Ilay Campbell.  
Reporter, Ankerville.*

1783. November 19. JAMES ROBERTSON, BARCLAY, and OTHERS, *against* RACHEL SPOTTISWOOD.

BANKRUPT.

A precept of sasine granted by a bankrupt in implement of marriage-articles, long prior to the bankruptcy, falls not under the sanction of the statute 1696.

[*Faculty Collection, IX. 193; Dict. 1177.*]

JUSTICE-CLERK. If a man lends his money on heritable security, and, either

from confidence or carelessness, does not take infestment, and, in the event, is a loser, *sibi imputet*; but I view the condition of a wife in a very different light. When a wife accepts of marriage-articles, and an obligation to infest her in particular lands, she gives up her legal claims: she is under the protection of her husband, and it was his duty and his obligation to grant her infestment: it was a fraud in him to omit it, and the creditors cannot take advantage of his fraud.

BRAXFIELD. Had the infestment been granted *debito tempore*, no injustice would have been done to other creditors; but, as Mr Robertson did not grant the precept till he was bankrupt, in this he is doing no injustice: but then the question is, Whether this be not doing injustice to other creditors, in the supposition of its giving a preference to the wife? The wife ought to have adjudged in implement, and then have applied to the superior for infestment, and then there would have been a race amongst the creditors; but that was not done.

MONBODDO. An inhibition would not have affected this infestment. The Act of Parliament 1696 cannot have a stronger effect than an inhibition.

On the 19th November 1783, "The Lords repelled the objection, and preferred Rachel Spottiswood (Mrs Robertson.)"

*Act.* A. Wight. *Alt.* C. Hay.

*Reporter,* Ankerville.

*Diss.* Braxfield, (in the chair,) Elliock, Stonefield, Hailes, Ankerville, Henderland.

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1783. November 20. JOHN RICHARDSON and COMPANY *against* MESSRS STONER, HUNTER, and COMPANY.

#### EXERCITOR.

A purchaser from a ship-master of a cargo, which the purchaser knew had not arrived at the place of its destination, is liable to the owners in damages.

[*Faculty Collection, IX. 198; Dictionary, 3956.*]

[No notes taken in this circumstantiated case; but the following are the notes of Hailes, who, on account of the connexion between this and another cause, in which he was declined, did not vote.]

Messrs Stoner, Hunter, and Company *knew* that Captain Martin had no power over the cargo of salmon, and that it was under engagement to Venice.

In this view of the case they gave their *advice*, and *it* was to sell the cargo in Spain.

*1st*, Because the ship had sprung a leak. *2dly*, Because it was so late in the season, that the ship could not have reached Venice before *Lent* was over;