

1785. July 21. JOHN GOODFELLOW *against* ANDREW MADDER.

BILL OF EXCHANGE.

Fraud on the part of the acceptor.

[*Faculty Collection, IX. 353 ; Dictionary, 1483.*]

JUSTICE-CLERK. In the case of *Tenant*, there was a specific condescence of fraud to be proved by unexceptionable witnesses ; but here the suspender does not offer to prove the fraud by witnesses,—he desires first to have his party examined, that, in consequence of such examination, he may be enabled to condescend on witnesses. The same objection might be made to payment of every bill in the circle.

BRAXFIELD. I agree in the principles : but the pursuer is not an onerous indorsee. Besides, it is admitted that the debt is not fairly set furth, as to its nature, in the bill.

PRESIDENT. Condescend on fraud, and I will admit every sort of proof : but that is not the case here ; it is only said that, if the party be examined, something may be discovered.

On the 21st July 1785, “ The Lords found the letters orderly proceeded ; ” adhering to the interlocutor of Lord Monboddo.

*Act. H. Erskine. Alt. Ro. Dalzell.*

1785. July 22. WILLIAM CAMPBELL of Craigie *against* ROBERT SILLER.

SEQUESTRATION—TACK.

A lease having been granted of lands which were Sequestrated after its date, but before the term of entry, the lessee found entitled to require possession in implement of the contract.

[*Faculty Collection, IX. 372 ; Dictionary, 15,223.*]

JUSTICE-CLERK. I should be sorry if it were law, that one under diligence should have it in his power to prorogate a tack for 99 years, which is a term nearly equal to a perpetuity. The factor ought to have come to the Court and asked advice. We must determine now as we should have advised then. We certainly would not have allowed the factor to put the tenant in possession, nor can we allow the tenant to remain in possession.