

1786. *July 28.* WILLIAM M'ILWRATH, &c. *against* ROBERT RAMSAY.

JURISDICTION—FACTOR.

A Factor appointed by the Court of Session, in virtue of the Act 1772, cap. 72, found liable in the penalties, after the Statute itself had been allowed to expire.

[*Fac. Coll. IX. 504; Dict. 7458.*]

JUSTICE-CLERK. No man can be charged for any offence committed against a statute *after* the statute has expired; but here the offence is said to have been committed while the statute was in force.

PRESIDENT. By the last act, the sequestration is at an end, for no application was made in order to have it renewed.

BRAXFIELD. The statute was temporary: a factor might have incurred penalties even to the last moment of the statute. Every thing that happened during the subsistence of the statute may be tried *quocunque tempore*. The factor is an officer of Court, and he may be brought into Court by a summary complaint.

SWINTON. The factor may still be punished, but not by a summary complaint on the expired statute.

ESKGROVE. It seems admitted, that the *civil* effects of the old statute still subsist, and I see no good ground to distinguish the *penal* part from the *civil*.

DUNSINNAN. I think that an ordinary action is still competent, but not a complaint.

MONBODDO. The saving clause is sufficient to authorise a summary complaint.

HENDERLAND. Subjects recovered by the factor for the creditors, cannot be affected by the diligence of any creditor. Here the question is as to penalties: they are at end whenever the statute ceases, with this exception however, if the penalties have been pursued for before the expiration of the statute.

On the 28th July 1786, "The Lords found the summary complaint not competent, reserving ordinary action."

Act. G. Ferguson. *Alt.* R. Corbett.

Diss. Justice-Clerk, Braxfield, Eskgrove, Monboddo.

1786. *November 21.* BRAXFIELD. A factor appointed by the Court is amen-

able in a summary manner : the repeal of the Act of Parliament makes no difference.

JUSTICE-CLERK. I cannot conceive how a man who has transgressed his duty as a factor, should not be tried as a factor. There is no occasion for an ordinary action : the statute gave a jurisdiction ; but, on the repeal of that statute, a summary jurisdiction at common law revives.

ESKGROVE. Every man who accepts of a factory is bound to know its conditions, of which one is the being liable to answer summarily. This factor has not been discharged ; and, as he accepted of the factory, he virtually became bound to submit to the conditions of it : he was bound *ex quasi contractu*.

On the 21st November 1786, "The Lords found the complaint competent ;" altering their interlocutor of the 28th July 1786 : and on the 6th December 1786, "adhered."

Act. G. Ferguson. *Alt.* H. Erskine.

Diss. Stonefield, Hailes, President ; (Henderland absent.)

1786. *November 22.* JEAN GEDDES and OTHERS *against* ALEXANDER HARE and OTHERS.

BILL OF EXCHANGE.

A Bill not subscribed by the drawer, sustained.

[*Fac. Coll. IX ; App. XII, No. 8 ; Dict. 1446.*]

BRAXFIELD. A bill is a mandate ; but a mandate cannot be without a mandant. Bills are necessary for commerce ; but we must beware of forgery, and be cautious not to vary the nature of bills.

SWINTON. A mandate may be given any way, and presumptions may be so strong as to imply a mandate.

ESKGROVE. I agree with Lord Braxfield's principles. Were this a question as to summary diligence, I should not think that summary diligence would be granted ; but it is another question whether there be a document of debt, and I think that there is the name of the creditor in the body of the bill : there are payments proved, and, in the trust-right, mention is made of bills.

BRAXFIELD. A promissory-note is an unilateral obligation, and quite a different thing from a bill.