

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.

On the 23d November 1786, "The Lords, *in respect of the special circumstances of the case*, repelled the objections;" adhering, in substance, to the interlocutor of Lord Alva.

*Act. W. Honeyman. Alt. R. Dalzell.*

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1786. November 29. WILLIAM ALLARDICE *against* JAMES MORISON and OTHERS.

### LITIGIOUS.

Land rights not rendered litigious by the mere execution of a summons.

[*Fac. Coll. IX. 507; Dict. 8336.*]

MONBODDO. I am clearly of opinion for the interlocutor, both as to fact and law. As to the question of law, it is of great moment, being this, Whether an execution of a summons of declarator renders a subject litigious, so as to make null all voluntary rights or dispositions granted after its date? This cause cannot be determined on the principles of the old Roman law; for the *in jus vocatio* of that law was the laying hold of the party, and the bringing him into court without telling him wherefore. Our summonses are solemnly executed by a messenger invested with the royal authority. From the decision in Balfour, it appears that execution interrupted; and it is no answer to say that our records did not exist at that time. The Act 1696 proceeds on this supposition, because it appoints interruptions to be registered. The effect of altering this interlocutor would be to allow debtors to make fraudulent conveyances, and so turn their estate into money. The records, of which we have heard so much, have nothing to do in the matter. The law has properly said, that the *second* disponee, with the *first* infestment, shall be preferred. This prevents the fraud of double rights. But when the subject is disposed from different authors, or from the same author in different circumstances, the records have nothing to do in the matter. A man is in possession for 39 years and 364 days, and then has a summons executed against him by the *verus dominus*: no creditor or disponee can, in such case, appeal to the records as securing them. I was against the appointment of a hearing, for I thought the cause perfectly clear, and that no cause can be made clearer by having it called in question.

ESK GROVE. I do not see that Allardice could have any accession to Bogie's fraud. It would strike very deep, should a man be held guilty of a fraud because his people of business have done wrong: neither can I think that Mr Duff has been any way participant in the fraud. The most that can be said is, that Mr Duff was less cautious on this occasion than he is wont to be. As to the point of law, it is said that the Roman law has nothing to do with this