

JUSTICE-CLERK. This is against the Act of Parliament.

MONBODDO. The fine is a sum of money ; and he who is entitled to receive it must aliment.

On the 7th December 1787, on a Saturday, with a thin or weak bench, and during the absence of the Lord President, The Lords gave judgment, in terms of Lord Braxfield's conclusions, in opposition to every precedent.

*Reporter, Alva.*

*N.B.* This was the first time at which I felt the consequence of our being deprived of the President. I may live to see many more examples of the like nature. *Deus providebit !*

1787. December 12. ARCHIBALD HAMILTON *against* JOHN WOOD, &c.

### HYPOTHEC

Does not take place on Ships for repairs, made in home ports.

[*Faculty Collection, X. 65 ; Dictionary, 6269.*]

BRAXFIELD. My judgment went upon the supposition, that in practice there was such a bottomry right ; but, on principle, I think that there ought to be no such lien, as tending to cramp trade.

ESK GROVE. The practice of the Court of Admiralty has gone otherwise : this was founded partly on the civil law, and partly on a mistake as to the sense of Lord Stair.

HAILES. The sense of Lord Stair was plainly misunderstood, and so has been the sense of Mr Erskine : both of them speak of *foreign* contractions. I do not value the opinion of Scottish merchants in general, or of the practice of the merchants on the Clyde in particular ; what I look to is the judgment of the courts of the greatest commercial nation that ever existed, proceeding on general principles and practice.

JUSTICE-CLERK. We have now clear evidence of the practice in England ; and we ought not to adopt and sanctify any hypothesis contrary to that practice.

On the 12th December 1787, the Lords, "after having heard the opinion of Dr Winne, found that the furnishers in this case had no preference ;" altering the interlocutor of Lord Braxfield.

*Act. Mat. Ross. Alt. Ed. M'Cormick.*