

might, by the circuit of a trust-bond, have pursued this reduction; and why may he not in the present shape?

BRAXFIELD. By charging a man to enter heir, in consequence of a trust-bond, I carry all right that was in the predecessor.

On the 22d January 1777, "The Lords found that the pursuer's right of apparenry, as heir (of investiture) to Charles Graham, is a sufficient title to carry on the process of reduction on the head of deathbed;" adhering to their interlocutor, 3d December 1778.

Act. W. Stewart. *Alt.* J. Swinton.

Diss. Kaimes, Stonefield, Braxfield.

1779. February 5. THOMAS DUNLOP and OTHERS *against* ALEXANDER SPEIRS and OTHERS.

RIGHT IN SECURITY.

[*Fac. Coll. VIII.* 124; *Dict.* 14,197.]

JUSTICE-CLERK. If the bill had been protested for not-payment, recourse would have been competent against the drawer and the indorser to the holder, and then the holder might have adjudged for the whole, and, in ranking, would have been entitled to have been ranked for the whole; but *here*, before the bill became payable, a payment was made,—that is, before any debt was constituted against the drawer, the partial payment was made by the acceptor, the primary debtor. It is a new notion, that a partial payment, made by the primary debtor before the bill became due, does not diminish the extent of the debt.

COVINGTON approved altogether of Lord Justice-Clerk's opinion.

BRAXFIELD. When securities are created over different subjects, in favour of creditors, these securities remain until the last sixpence is paid, and the ranking goes against the whole subjects. *This* is the rule as to real subjects, and I think that it is the rule as to personal subjects. The creditors must rank according to the state of the rights when the trust-right was created. What is it that differences this case from the case of payments made by two *correi debendi*? I think that there is a *jus crediti* against a drawer from the very date of the bill. Although the drawer should become bankrupt before the term of payment, I might still adjudge his estate in security.

MONBODDO. He may adjudge; but still this is a conditional debt: and, if payment is made before the condition exists, nothing remains as the subject of the adjudication but the balance.

On the 5th February 1779, "The Lords found that the creditors cannot be ranked for the sums paid before the bill became due, or was protested."

Act. Ilay Campbell. *Alt.* A. Wight.

Reporter, Kennet.