

MONBODDO. If a subscription is once acknowledged, there is no danger of forgery, and consequently no occasion for witnesses.

HAILES. The observation contradicts what the Lords found in the noted case, *M'Kenzie* against *Park*, and in various cases decided since that time, on the principles then established.

PRESIDENT. This case shows the necessity of adhering to forms. When people do things in a hurry, they leave clauses to be hereafter adjusted by courts of law; not so when a formal writing is coolly and deliberately executed.

On the 29th July 1779, "The Lords assoilyied;" altering Lord Covington's interlocutor.

Act. A. Rolland. *Alt.* G. B. Hepburn.

1779. November 17. LIN DILLON against JOHN CAMPBELL of Blithswood.

TAILYIE.

[*Faculty Collection, VIII. 190; Dict. 15,432.*]

MONBODDO. The intention *here* is, to lay a burden on the entailed estate: There is a statute, and a wise one, which, under certain conditions, allows burdens to be laid on the entailed estate; but *that* is when the heir in possession does himself expend the money. The case *here* is different: the heir expends nothing. He draws a large rent, and leaves a burden on his successors. On this ground I would alter; but I would adhere, supposing that the tenement in question was an urban tenement, and not falling within the statute which authorises entails.

COVINGTON. May not an heir of entail make a bargain to this purpose:—The tenant shall be at the expense of inclosing, and shall have an equivalent at the expiration of the lease. This would be a burden on the next heir: it is not a debt contracted, but a purchase made, accrescing to the entailed estate.

KAIMES. I thought that, on the footing of meliorations made, the interlocutor was right.

BRAXFIELD. An heir of entail may meliorate the entailed estates, but not so as to risk the very existence of that estate: he cannot meliorate it, by burdening it with debt on which, to the ruin of the estate, adjudication may follow.

PRESIDENT. Gave up his former opinion.

On the 17th November 1779, "The Lords assoilyied;" adhering to the interlocutor of Lord Braxfield, Ordinary, and altering their own interlocutor.

On the 13th January 1780, they adhered to this interlocutor.

Act. R. Cullen. *Alt.* Ilay Campbell.

Diss. Kaimes, Gardenston, Covington.

N.B.—At the last advising of the cause, there was some controversy as to the question, Whether burgage tenements, and, in particular, houses and gardens within borough, fell within the words and the spirit of the Act *anent tailies*? But this question could not be determined, the heirs of entail not being parties in the cause.

1779. November 30. HUMPHRY BLAND GARDENER *against* GEORGE SPALDING and his CURATORS.

ARRESTMENT.

Arrestment not a habile mode of affecting the reversion of an estate sold judicially.

[*Fac. Coll. VIII. 177*; *Dict. 730.*]

BRAXFIELD. In the case of a judicial sale, the creditors must be paid before the purchaser can have right to the lands. The price of the lands is an heritable subject, and the creditors must carry it by adjudication. The heir must carry the reversion by service and infestment; he cannot carry it, like moveables, by confirmation.

KAIMES. The reversion of an estate, sold under the Act 1681, belongs to the heir after the creditors are paid; but the heir must make up titles to it, and so must creditors. There is an inconveniency in obliging the creditors to adjudge; but *incommodum non solvit argumentum*.

MONBODDO. The price of an estate, sold under the Act 1681, does not become a moveable subject.

GARDENSTON. An adjudication might be necessary, were there any competition of creditors; but here there is none. It is the curator of the heir who is pleading, plainly to the prejudice of the heir, and he forces the creditors to tear the estate to pieces by adjudication.

JUSTICE-CLERK. I have some doubt how far the rule of law can apply to this case.

KAIMES. Here there is an apparent heir only. He could not get the subject without a real title; and how can the creditors get it from him by a forthcoming?

COVINGTON. How came the apparent heir to get an aliment *here*, as he has not entered?

BRAXFIELD. That is not the present question; but I see how he could get it. An apparent heir has right, although not entered to the rents of the estate.

On the 30th November 1779, "The Lords found that the reversion could not be attached by arrestment;" adhering, in substance, to Lord Westhall's interlocutor.

Act. G. Ferguson. Alt. W. Nairne.