though her being Mr Watson's wife was probably the origin of the connexion; and therefore sustained the defences, and assoilyied the defender;" adhering to Lord Auchinleck's interlocutor.

Act. W. Nairne. *Alt.* R. Blair, H. Dundas.

Diss. Justice-Clerk, Coalston.

Non liquet, Pitfour.

1769. *December 5.* The Earl of Hyndford, and Others, *against* David Dickson of Kilbucko.

SEQUESTRATION.

Sequestration of Rents awarded upon the application of the Trustees of the proprietor of the estate, deceased, though opposed by the Heir, who had brought a reduction of the trust-deed.

[*Faculty Collection, V. p.* 14; *Dictionary,* 14,847.]

Monboddo. An heir cannot enter into possession of a subject conveyed by his predecessor to a disponee. In such circumstances the apparent heir is considered as a stranger. This is so much the case, that, when there is a deathbed disposition to a stranger, the apparent heir may not serve, and therefore is allowed to reduce without service.

Justice-Clerk. It is strange if, in consequence of the maxim, *hæres est eadem persona cum defuncto,* an heir should be allowed to counteract the most solemn deed of the defunct. The maxim is totally misapplied.

Pitfour. If the disposition is not liable to any objection, I do not see why the trustees should have any occasion to apply for a sequestration. David Dickson may say, I will not allow you to load the trust-right, and consequently me and mine, with the expense of a factor;—levy the rents yourselves, as the trust-right authorises you. In the case of *Forglen,* a deed, excluding the heir, and liable to exceptions, was found not to bar the possession of the heir: the same thing occurred in the *Annandale* case. I would allow David Dickson to continue in possession, upon finding caution.

Coalston. It was formerly doubted who entitled to possession,—the disponee or the apparent heir? Decisions formerly were not uniform. Later practice prefers the disponee where there is no objection *ex facie.* I would sequestrate the heritable estate, and inquire farther into the state of the rights to the moveables.

Kaimes. John Dickson was infeft in some lands, not in others. The property of the lands, in which John Dickson was not infeft, was not conveyed to the trustees; consequently as to them the apparent heir must possess: But, as the trustees have a personal right, he must find caution.

AUCHINLECK. John Dickson had a title of property, either personal or feudal, to the whole subjects disponed: the disponees are preferable to the heir. As to what is said, that the trustees have no occasion for sequestration, in that I would allow the parties to judge for themselves. If, from appointing a factor, any unnecessary expense should arise, the objection against it will be entire when the trustees come to institute a count and reckoning.

KENNET. In modern practice a disponee is preferred to the apparent heir. David Dickson cannot object that the trustees are willing to quit possession: this is rather advantageous to him than hurtful, for it will leave the rents *in medio*, to which he claims right. As to sequestrating the moveable estate, it appears that the trustees expede a partial confirmation: this gives right to the whole. David Dickson's confirmation is not good, not being *ad omissa*, and being expede *pendente processu*.

PRESIDENT. The case of *Douglas*, mentioned by both parties, is not in point. Mr Douglas was both heir-of-line and had a death-bed disposition in his favour. His titles would have been completed in a day or two: besides, there seemed to be a plan of putting him out of possession, and thereby of disabling him from maintaining his right. Here the trustees are *ex facie* in the right, and desire to have the estates sequestrated: here is a question litigious and proper for sequestration. The difficulty is, that the apparent heir says, Do not load me with the expense of a factor: if Mr Dickson is not himself a proper person to be factor, he may suggest some proper person. As to moveables; of Lord Kennet's opinion, and for the same reason.

COALSTON. My own opinion in the case of *Douglas* proceeded on this, That Mr Douglas was disponee by the death-bed deed.

On the 5th December 1769, the Lords "adhered to their interlocutor of the 1st August 1769, sequestrating the estate heritable and moveable; but remitted to Lord Elliock to hear parties further as to the nomination of a factor."

Act. A. Lockhart. *Alt.* R. M'Queen, D. Rae.

1769. *December* 5. JAMES RIDDEL of Crasteir *against* The MARQUIS of TWEEDDALE.

PLANTING AND INCLOSING.

The clause of the Act 1661, c. 41, respecting Half-dyke, is perpetual.

[*Fac. Coll. IV.* 359; *Dict.* 10,489.]

AUCHINLECK. This is an excellent statute, obliging every one to bear half-dyke. It is understood to be a subsisting law, and justly and happily so.

KENNET. In the case *Wilson* against *Sharp of Houston*, it was found by the Court to be a subsisting law. There, an equitable exception if a high road so