impossible to fix one general rule from the condescendences, for the practice of superiors varies. I can give no other deductions than for repairs and public burdens. It is impossible to go back to examine the original value of the subject 100 or 200 years ago. Were I sitting here as a legislator, I might listen to many of the arguments urged by the feuars: *here*, I must say what *is* law, not what *ought* to be law.

COALSTON. We are not at liberty to alter this feudal law. The superior is entitled to a year's rent of the subject at the time of the entry; but he can have no more: deductions must be made of public burdens and feu-duty, and also of a reasonable allowance for repairs. There are two or three cases where the Court did use liberties, in favourable circumstances, with the statute; but nothing of this sort occurs here.

On the 14th February 1775, "The Lords found the pursuer entitled to demand a year's rent from singular successors, as the subject is set, or may set, with deduction of public burdens and feu-duties, and a reasonable allowance for repairs;" adhering to Lord Alva's interlocutor in substance.

Act. R. M'Queen. *Alt.* A. Crosbie. Hearing in presence.

1775. *February* 21. JAMES WILSON and OTHERS, *against* JOHN STORY and The MAGISTRATES of PAISLEY.

COMMUNITY.

The Magistrates and Town-Council of a Burgh found entitled, for an adequate consideration, to sell the liferent of a superiority, without setting it up to public roup, although informed of an intended competition.

[*Faculty Collection, VII.* 38; *Dictionary*, 2529.]

HAILES. There was nothing wrong meant or done by the Magistrates. They got a fair price for the liferent superiority; as much, or more than they would have got from the pursuer, Wilson. Besides, it was natural for them not to choose to give the vote to the agent of the family that, in 1759, had got the town of Paisley turned off the roll: this would be giving their *new* vote to the persons who deprived them of their *old* one: this could not be expected.

COALSTON. Magistrates of boroughs are not proprietors; therefore they cannot alienate gratuitously, but they may for onerous causes. They are under no obligation to put up the subjects to public roup: If the Magistrates had not been interpelled, this would have been a good sale, for the offer made by Wilson was not so good as that made by Story; but the difficulty arises from Wilson's letter before the sale, desiring to be informed of the time of the sale that he might be put upon an equal footing. In such cases, magistrates must always take the most that can be had.

MONBODDO. It makes no difference that this subject was not part of the original common good, but acquired by the Magistrates. The bargain was not a bad bargain: nevertheless, more could have been got: they were interpelled. At the same time, I do not say that it ought always to be the rule to dispose of the common good by public roup, although I know that the town of Aberdeen always does it, and with great emolument to the community.

KAIMES. There is an old Act of Parliament which provides that the common good shall be rouped for three years. This was formerly supposed to relate to lands; but that notion is now exploded. Here the question is, What will be the consequence of not advertising Wilson? It cannot affect Story; for, as to him, the sale is good: It might go to damages, but what are the damages?—for it is not certain whether Wilson would have given more than Story.

AUCHINLECK. Politicians afford us new dishes every day. Suppose that the Magistrates of Paisley did not choose to make a freehold qualification, Could Wilson require them to do it for the good of the borough? Could we have found the Magistrates liable in damages for not selling their vote? I apprehend not. Suppose that Wilson had asked to purchase, might not the Magistrates have said, "We do not like your face." They durst not have said That he would be a disgraceful freeholder, for that might have landed them in a Commissary Court process.

KENNET. If the highest bidder must be taken by a public roup, this would be to encourage bribery, by giving the vote to the candidate who had the heaviest purse. The Magistrates might have got more; but they got enough.

PRESIDENT. If I see jobs as I thought I saw palpably in the case of *Stirling*, I would correct them: but when the question comes to be, Whether one man may live a year longer than another, I would not scrutinize so strictly. The Magistrates were formerly turned off the roll, and justly: they now endeavour to get on again in a way which the law permits. Here was a *delectus personæ*. I do not think that the Magistrates were obliged to take the highest offerer, however disagreeable to them. They might choose to have a man in their interest, not one connected with a candidate for the county. If one of the candidates for the county defrays the expense of this process, Wilson ought to defray the expense of the other party on account of his having acted as a tool.

JUSTICE-CLERK. It was proper for the Magistrates to give the vote to a person of consideration, who might use it in favour of a candidate whom he might consider the most useful for the borough and the nation: at the same time, they, with no less propriety, resolved not to give the subject away without an adequate price. If the general principle were admitted, Magistrates would always be bound to take the highest offerer. The bad consequences of this are obvious. Suppose that some member of a great company should desire to have a feu of a piece of ground, with the purpose of erecting a manufactory, but a private man wants to have a villa on that spot,—he offers more than the great company offers, or in prudence should offer; if the hands of the Magistrates are to be tied up, we would put it in the power of individuals to hurt the general interest. The views of the Magistrates, in this case, instead of being blameworthy, were laudable.

On the 21st February 1775, " The Lords repelled the reasons of reduction, and found expenses due."

Act. J. M'Laurin. *Alt.* J. Campbell. *Reporter*, Justice-Clerk.

Diss. Coalston, Monboddo.

1775. *February* 21. Messrs Cross and Bogle *against* John Mure, Factor on the Estate of D. Lock.

ARRESTMENT.

Used in the hands of a judicial factor, appointed in consequence of a sequestration awarded pending a process of *cessio*, and prior to the Bankrupt Act, 1772, if effectual.

[*Fac. Col. VII.* 41 ; *Dict.* 757.]

Monboddo. A factor who is not removable by the debtor, is not in the common case : he is just in the situation of a curator, whereas an ordinary factor is no more than the servant of his constituent.

Hailes. If you hold it necessary that arrestment shall be used in the hands of the bankrupt, not in the hands of the factor, on the subjects of the bankrupt, the only consequence will be involuntary breach of arrestment.

Coalston. By the late Act of Parliament, the estate is *vested* in the factor ; but that is not the case *here*. The factor is not vested in the estate ; he is only an administrator. I am at a loss to distinguish this factor from any other factor.

President. The factor is in the legal possession of the goods by authority of the Court. In the case of *Lockwood*, the Lords sustained an arrestment in the hands of the clerk of Court for consigned money.

Kaimes. I arrest in the hands of a debtor, to hinder him to pay to the common debtor. To what purpose is it to arrest in the hands of the bankrupt who cannot pay, rather than in the hands of the factor who can? By the late statute, the factor is *vested*, in truth and in words, a factor, like the present one in truth, though not in words.

On the 21st February 1775, " The Lords sustained the arrestment in the factor's hands ;" adhering to Lord Pitfour's interlocutor.

Act. A. Abercromby. *Alt.* G. Ferguson.
