

to grant policies or to adjust losses. It is quite a different thing when a man has a tavern or a shop in a foreign country, for there the *institor* binds his constituent. I am equally clear that Allan, being decreed to pay a specific sum of money, is a proper subject in whose hands arrestment may be lodged and forthcoming pursued. The two executions, however different in form, are tantamount as to their effect.

On the 29th January 1777, "The Lords found that the arestments in the hands of Allan are effectual;" varying their interlocutor of ———.

*Act.* A. Wight. *Alt.* Solicitor Murray.

*Diss.* Kennet, Stonefield, Hailes, Braxfield.

The Lords repelled the whole other objections, and remitted to the Ordinary.

1777. February 7. TRUSTEES OF FRANCIS, LORD NAPIER, *against* MRS MARGARET DRUMMOND.

#### WARRANTICE.

The Purchaser of an Estate is entitled, on Eviction, to recover the Value as it stood at the date of Eviction; and he is entitled to be reimbursed for Meliorations before he quits Possession.

[*Supp. V.* 636.]

COVINGTON. I thought it a point as well established as any in the law of Scotland, that the damage must be estimated as at the time of eviction. In the case quoted by Lord Stair, the point in question related to a sum of money; but the lawyers on both sides admitted the rule as to lands. No purchaser would ever improve an estate, if the value at the time of the sale were to be considered as the rule at the time of eviction. There is an error which runs through the whole of the argument for the defenders: this case is supposed to be the same with *that* where the parties are not at one as to the thing sold: that is not the case here. The progress was very bad, and the purchaser was stumbled at it, and therefore he took care to have a clause of warrantice uncommonly anxious and large. An estate is low rented; I purchase it with the view of getting an advanced rent, and I possess for thirty years. After I have formed this plan, and run all risks, am I when the subject is evicted to get nothing but my original price?

JUSTICE-CLERK. The doctrine of the defender, however plausible, would go far to overturn every thing that we have learned of law, in the case of eviction. I am also for the pursuers on the second point. Lord Napier did rashly in quitting possession, and so did Mr Drummond in not opposing it; but the defence is not sufficient. The doctrine of the civil law was very strict. The Roman lawyers thought that the right of retaining the estate was sufficient to secure; yet still justice says, that, although by any accident, a man should lose possession, still the value must be restored. I cannot see why action should be denied, even supposing me, by error or inattention, to have quitted that hold which the law gave me.

MONBODDO. I never could buy land but with the view of improving it, and I should think it hard were I to get nothing on eviction but the price which I paid.

PRESIDENT. The principle in law is, that, in an action of damages for indemnification, the real loss must be the rule.

On the 7th February 1777, "The Lords found that the defenders are liable to the pursuers in payment of the value of the estate of Edinbellie, purchased by Mr Drummond from Mr Livingston, sold by Drummond to Lord Napier, and now evicted from Lord Napier, as the same stood at the time of eviction, with interest thereof from the time when Lord Napier ceded the possession thereof to Mr Livingston, and in time coming while payment;" adhering to Lord Elliock's interlocutor and to their own interlocutor of 6th August 1776.

*Act. D. Rae. Alt. H. Dundas.*

1777. February 11. TRUSTEES of THOMAS BOYD *against* The EARL of HOME.

ACCESSORIUM SEQUITUR PRINCIPALE—PRESCRIPTION.

Diligence used upon a Bond corroborated, found not to save from prescription the relative bond of corroboration.

[*Fac. Coll. VII. 377; Dic. Appen. I; Acces. Seq. Prin. No. I.*]

COVINGTON. This is not a bond of corroboration, properly so called, but a bond accumulating the debt, principal and interest; and it is a *novum debitum* which may prescribe independent of the original bond. I have a doubt on the other ground, namely, the judgment of the commissioners of inquiry.

MONBODDO. It would look strange if we were to give a judgment contrary to that given by the commissioners. I have always thought that a bond of corroboration is different from an original bond, for the interest is accumulated.

BRAXFIELD. It is a certain proposition, that when a number of different persons are bound in payment of one debt, a document taken against any obligant preserves the bond from prescription against the rest; for prescription is founded on a presumption of payment *juris et de jure*, and a document taken excludes that presumption. If a bond of corroboration were a *novum debitum*, I could understand the distinction suggested; but in truth a bond of corroboration always refers to the original debt. If payment is not made of the original bond, it is impossible that the bond of corroboration can be paid. A document taken against a principal debtor is good against the cautioner; and it matters not whether the caution is in the same bond or in a different one.

PRESIDENT. I admit that diligence done against one cautioner would keep the bond alive against another; but I take the cause as it is before us: here is a *gravior obligatio* than the original one, for the interest is accumulated into a principal sum. Whenever an obligation is entered into, separated from the