

1782. *March 1.* JOHN and HUGH PARKER *against* DOUGLAS, HERON, and COMPANY.

COMPETITION.

Disponees in security with the disponent's personal creditors who had executed a pointing of unripe crops.

[*Faculty Collection, IX. 135 ; Dictionary, 2868.*]

BRAXFIELD. It was so long ago as in the last century that the Court determined that, on *debita fundi*, no more could be attached than the extent of the debt. What effect is the infeftment to have in competition with a pointing creditor? If the infester may attach the effects in the hands of the tenant, he may in the hands of the proprietor. In a question betwixt heir and executor, corn sown is moveable; but, in a question amongst creditors, it is not moveable. An adjudging creditor infefting himself would be entitled to reap the crop. Is not the right arising from an heritable bond and infeftment as effectual?

PRESIDENT. With regard to the tenant, the case is one thing, but another when the original proprietor is allowed to remain in possession to labour and sow and nothing is done in the way of diligence.

BRAXFIELD. Rights that are *debita fundi* are as good now as ever they were.

GARDENSTON. An assignation to maills and duties, in an heritable bond with infeftment, will give a preferable right to the creditor for what existed at the time; but it will not to the produce. Great part arises from *cultura et cura*: here the creditor permits the debtor to remain in possession instead of removing him; so that, to appearance, the debtor remained full proprietor. Is it possible that the creditor can say, I will seize the whole subject? And why may not the personal creditors attach it? The creditor here is not accountable when he fails to intromit: so, according to the argument used for Douglas, Heron, and Company, such a creditor may keep out other lawful creditors, and favour the debtor to their prejudice.

MONBODDO. This case is new and extraordinary: the heritable creditor allows the debtor to plough and sow,—a personal creditor begins to point,—the heritable creditor then obtains a sequestration, and proposes to exclude the personal. An heritable creditor has a right to the lands, but not to the fruits. The petition for sequestration was improper, because the creditor had no hypothec. The only method that he had to follow, was to obtain a pointing of the ground, and to turn the debtor out of possession.

On the 1st March 1782, “The Lords preferred John and Hugh Parker the pointers;” altering the interlocutor of Lord Braxfield.

*Act.* J. M'Laurin. *Alt.* A. Wight.

*Diss.* Hailes, Braxfield.