

from confidence or carelessness, does not take infestment, and, in the event, is a loser, *sibi imputet*; but I view the condition of a wife in a very different light. When a wife accepts of marriage-articles, and an obligation to infest her in particular lands, she gives up her legal claims: she is under the protection of her husband, and it was his duty and his obligation to grant her infestment: it was a fraud in him to omit it, and the creditors cannot take advantage of his fraud.

BRAXFIELD. Had the infestment been granted *debito tempore*, no injustice would have been done to other creditors; but, as Mr Robertson did not grant the precept till he was bankrupt, in this he is doing no injustice: but then the question is, Whether this be not doing injustice to other creditors, in the supposition of its giving a preference to the wife? The wife ought to have adjudged in implement, and then have applied to the superior for infestment, and then there would have been a race amongst the creditors; but that was not done.

MONBODDO. An inhibition would not have affected this infestment. The Act of Parliament 1696 cannot have a stronger effect than an inhibition.

On the 19th November 1783, "The Lords repelled the objection, and preferred Rachel Spottiswood (Mrs Robertson.)"

*Act.* A. Wight. *Alt.* C. Hay.

*Reporter,* Ankerville.

*Diss.* Braxfield, (in the chair,) Elliock, Stonefield, Hailes, Ankerville, Henderland.

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1783. November 20. JOHN RICHARDSON and COMPANY *against* MESSRS STONER, HUNTER, and COMPANY.

#### EXERCITOR.

A purchaser from a ship-master of a cargo, which the purchaser knew had not arrived at the place of its destination, is liable to the owners in damages.

[*Faculty Collection, IX. 198; Dictionary, 3956.*]

[No notes taken in this circumstantiated case; but the following are the notes of Hailes, who, on account of the connexion between this and another cause, in which he was declined, did not vote.]

Messrs Stoner, Hunter, and Company *knew* that Captain Martin had no power over the cargo of salmon, and that it was under engagement to Venice.

In this view of the case they gave their *advice*, and *it* was to sell the cargo in Spain.

*1st*, Because the ship had sprung a leak. *2dly*, Because it was so late in the season, that the ship could not have reached Venice before *Lent* was over;

and, consequently, that the salmon could not have been sold to advantage at Venice.

As to the *first*, Messrs Stoner and Company did not know any thing, at that time, of the nature of the leak, and it was easily stopt up.

As to the *second*, it seems trifling to say that the market for salmon at Venice depended on *Lent*, for, in Roman Catholic countries, there are many *fish-days* throughout the year; and, at Venice, there are many thousands of the Greek Church who observe different Lents, not connected with the observances of the Roman Catholic Church.

Messrs Stoner and Company did not *know* the current price of salmon at Venice: what they said was merely from *guess*.

Besides, Messrs Richardson and Company might have inclined to sell the salmon at Venice on a *small* profit, or on no profit at all, in order to begin a trade of exporting salmon from the Tay to Venice.

*One* merchant is not to judge for *another*: and the advice here given seems strange advice.

If advice *only* had been given, I should have doubted of making Stoner and Company liable: but this was not *mere advice*. They accommodated Captain Martin with every thing; and, having helped him to sell his salmon at an under value, they loaded his ship on an adventure of their own, and sent it *back* to Scotland.

*This* seems the real cause of the transaction: Messrs Stoner and Company would not suffer Messrs Richardson and Company to speculate *forwards* to Venice; but they took this chartered ship, and speculated *backwards* to Scotland.

It is said, "that part of the salmon was damaged." What then? *1st*, The quantity might be about one-fifth of the whole. *2d*, Not damaged to the amount of *20 per cent*. *3d*, *This* not known when the cargo was sold at Cadiz.

On the 20th November 1783, "The Lords found Messrs Stoner and Company liable;" adhering to Lord Ellick's interlocutor.

*Act*. A. Wight. *Alt*. Ilay Campbell, A. Tytler.

*Diss*. Justice-Clerk, Kennet, Alva.

*Non liquet*, Westhall.

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1783. *December 4*. WILLIAM YOUNG, Deacon of the Bakers in Edinburgh, *against* WILLIAM DOWIE.

#### BURGH ROYAL—EXCLUSIVE PRIVILEGE.

Exclusive privileges of the Incorporated Crafts not confined to manufacturing alone.

[*Fac. Coll. IX. 209; Dict. 1976.*]

HAILES. If the argument for the defender be good, all the rights of the in-