On the 28th February 1788, "The Lords preferred Scot, the assignee;" adhering to their interlocutor of the 27th November 1787.

Act. Ilay Campbell. *Alt.* Allan M'Conochie.

Diss. Henderland, Stonefield, Braxfield, Dunsinnan, Hailes.

1788. *March* 1. JOHN HAY *against* CREDITORS of ANDREW SINCLAIR.

BANKRUPT.

A person assigned his share in a mercantile adventure. The assignment was not intimated till within sixty days of his bankruptcy; found that the assignment being made, though not intimated before bankruptcy, was effectual.

[*Fac. Coll. X.* 45; *Dict.* 1194.]

JUSTICE-CLERK. The petitioner endeavours, by analogy, to extend the Act 1696 from heritable to personal rights, for which there is no authority in law. Much is argued from the time and manner of intimating the assignation; but, in truth, intimation was not necessary at all.

DREGHORN. This is a hard case: a person gets an assignation and conceals it. People deal with the assigner, supposing him still to have a property, which he has not.

HENDERLAND. It might be right to remedy this by a statute; but the law, as it stands, gives no remedy.

On the 1st March 1788, "The Lords repelled the reasons of reduction;" adhering to the interlocutor of Lord Rockville.

Act. G. Buchan Hepburn. *Alt.* J. Pringle.

1788. *March* 8. WILLIAM HANNAY *against* JAMES STOTHERT and OTHERS.

SALE.

Condition, that if the highest offerer at a sale do not find caution within thirty days, the purchase shall devolve on the immediately preceding offerer: Found to give this last a positive right if the exposers had called on him for performance.

[*Fac. Coll. X.* 58; *Dictionary*, 14,194.]

MONBODDO. This is not a conventional irritancy, but a conditional sale; and the condition has not been complied with: Had there been no prior offerer, the

seller might have taken back the land. The instances produced as to practice, confirm me in my opinion. If there had been evidence that bonds of caution were wont to be received after a certain number of days, I should have paid regard to such practice. But there is no such practice. Bonds of caution have been received one day, and two hundred and forty days after the time conditioned; and there is no example of the question having been tried and determined against the prior offerers claiming.

ESKGROVE. The condition, being made absolute, is in favour of the creditors; and therefore they are not bound to insist against the prior offerer, but the prior offerer may insist, by protest, to be relieved. Here the creditors pass from the last offerer, and require the prior to stand to the bargain: what defence could the prior offerer have? None. The last offerer, when he omits to find caution, as conditioned, must run that risk which has happened in the present case.

BRAXFIELD. By the lapse of thirty days, or of any other stipulated time, there is no *jus quæsitum* to the prior offerer; for the stipulation is in favour, not of him, but of the creditors. When, however, the creditors say that they are not willing to rely on the personal security of the last offerer, but, on the contrary, require the prior offerer to find caution within ten days; there the prior offerer is bound, and the transaction is finished.

PRESIDENT. If the last offerer could say that, by the act of Providence, he was prevented from finding caution, much might be said; but that is not made out here. It is of consequence to keep the proceedings in sales accurate.

On the 8th March 1788, "The Lords refused the petition, and found that the respondents are entitled to be preferred, in terms of their offers."

Act. Ilay Campbell. *Alt.* G. Fergusson, W. Honeyman.

Reporter, Swinton.

1788. *June.* JOHN M'KENZIE, LORD M'LEOD, *against* LIEUT. COL. ALEXANDER ROSS and OTHERS.

See supra, 21st June 1787.

THIRLAGE.

No multure can be demanded for grain due to the superior of the astricted lands, although he shall accept of a sum of money in lieu of it.

[*Faculty Collection, X. 37; Dictionary,* 16,070.]

JUSTICE-CLERK. From time immemorial there never was any deduction claimed or given. Had a contract been entered into, in terms of the petitioner's argument, it would certainly have been good; and how can we better judge of a contract having been entered into than by immemorial usage: horse and seed