

1789. February 25. GIDEON GRAY *against* ARCHIBALD SETON.

## LIFERENTER.

A liferenter can sell no wood except coppice, not even although planted by himself.

[*Faculty Collection*, X. 116; *Dictionary*, 8250.]

SWINTON. If a liferenter may cut hagggs annually, why may he not let them grow; and then, after 20 or 30 years, cut them all together?

HAILES. There is one obvious reason why he cannot: when he cuts annually, a new growth begins the next year, whereas, by doing all at once, he deteriorates the estate. Suppose him to live for twenty-five years, if he cuts annually he will leave one twenty-fifth ready for cutting next year, one twenty-fifth to be cut in the year after, and so on: whereas should he, in the twenty-five years, cut the whole, there must be an interval of twenty-five years before there can be any new cutting at all: this would inroach very materially on the right of the fiar. I must observe here, that the permission asked by the factor proceeds on the supposition that the cutting down all the trees on an estate does not diminish the value of the estate; which is a great error.

Some other judges spake to the same purpose.

On the 20th February 1789, "The Lords refused the incidental petition of the factor."

For the petitioner,—A. Abercrombie. *Alt.* H. Erskine.

1789. March 3. STIRLING BANKING COMPANY *against* STEWART, ALLAN, and COMPANY.

## FRAUD.

An insolvent person having purchased goods on credit, within three days preceding his bankruptcy, such purchase was presumed in law to be fraudulent; but, with respect to goods purchased before the *triduum*, the Lords judged it incumbent on the party desiring restitution, to prove actual fraud. On an appeal, the first part of this judgment was reversed.

[*Faculty Collection*, X. 84; *Dictionary*, 4949.]

ESK GROVE. There must have been bills of lading in the case of *Prince* and *Pallet* a century ago; and yet the Lords did not consider them as a transfer; and there has never been any decision to the contrary. In the case of *Hastie*,

and in others, the competition was among creditors. Here the question is between Stein the purchaser, with others in his right on the one side, and the sellers on the other.

JUSTICE-CLERK. The case of *Hastie* and *Jamieson* does not apply : it would, if Allan and Stewart had become bankrupt, and arrestments had been used. [I do not clearly perceive what difference that would have made : the competition would still have been between Stein or creditors in his right, and Allan and Stewart, or creditors in their right.] The law of England is more favourable to the petitioners than the law of Scotland ; yet still the English lawyers hold that the goods may be stopt *in transitu*, which is inconsistent with the notion that the indorsation of a bill of lading conveys property.

SWINTON. The *terminus a quo* is the time at which the bankrupt gets possession of the goods.

MONBODDO. Had there been a *series rerum judicatarum*, I should have submitted to the judgment in the case of *Cave*, though I always doubted of it ; but I see no such series. Here the purchaser did not insist on the delivery of the grain ; it was voluntarily delivered. The fraud presumed is, when the bargain is within the three days ; and that was the opinion of Van Lewen, and is agreeable to the civil law. [It is singular that Lord Monboddo should have always doubted as to the decision in the case of *Cave*, after having supported it at the last hearing. Lord Monboddo is not so decided as he has been ; he has become apt enough to vote against his own interlocutors ; which was not supposed to be the case formerly.] The specialty here is strong. In the decision of the House of Peers, *Hastie* against *Jamieson*, the indorsation of a bill of lading was held to be a transference of property ; and it is by the decrees of that Court that I go. Delivery of the key of a granary is the delivery of the grain ; it and the case is the same here.

PRESIDENT. I cannot imagine that the rule of three days means "between bargain and tradition." A contract entered into three months ago would be voided by the law of England should a bankruptcy ensue, if the goods be not delivered till after the bankruptcy. It is clear that, by the law of England, there cannot be any delivery from and after the bankruptcy. The Court here thought that the presumption of fraud should go three days back. The whole system of our law proceeds upon days and hours ; and by such calculations all diligences are tried and regulated.

On the 3d of March 1789, "The Lords found that Allan Stewart and Company are entitled to restitution of the grain delivered by them into the granaries of James Stein, within three days of 23d February 1788, when he stopt payment ; and which remained in his possession unmanufactured ;" adhering to their interlocutor of the 11th December 1788.

*Act. R. Blair, &c. Alt. Mat. Ross, &c.*

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