

George, By the 17th Act of Parliament 1681, the debtor's whole estate must be valued and sold, else it cannot be known whether he be bankrupt or not; because they might leave out such portions of it as would do much more than pay his debts. And *ita est* Sir Patrick, in adducing a probation of Mr George's estate, has only led it in relation to his lands of Bughtrig, and omitted altogether a right of comprising he had on the estate of Lumisden, which Sir Patrick undervalued, because he had bought these lands without it. Two things stuck with the Lords, *viz.* 1mo. That, in such illiquid rights, where they had not obtained possession, it was hard to put an estimate and value thereon; for neither could the summons of the apprising be the rule, nor the value of the lands appraised, till its rank and preference were known, and the rent of the appraised lands. 2do. If the Lords, in the sale of bankrupts' lands, considered any more but their clear liquid accessible estates, whereof they were in possession, then not one of ten of those sales would be perfected; because they would always obtrude their claims and pretences they have by appraisings, or otherwise, upon third parties' estates. Which moved the plurality of the Lords not to regard such rights as sufficient to stop the sale. Some were of opinion that the word *estate*, in the Act of Parliament, comprehended *jura, nomina, et actiones*, as well as lands and immoveables, and that the whole behoved to be exposed to sale; though, if bidders do not occur for the whole, it might be sold in parcels. The case is of great importance, and has inconveniences on both sides. The balance must fall where they are least.

*Vol. I. Page 640.*

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1694. July 28. ————— Hog, a Messenger, *against* GIELS DOUGLASS.

ON a bill given in by Hog, a messenger, against Giels Douglass, who pursued him before the Lyon and his brethren, by the subsidiary action, for payment of a debt, because he had suffered George Campbell, the debtor, to escape; and he advocated on this reason,—That he had accepted of the caption with this express quality and condition, That he should not be obliged to break up Mr William Thomson's closet, in whose house he was alleged to lurk. To this it was ANSWERED, 1mo. This was against his oath of admission to serve the lieges faithfully, and was against the will of the letters allowing him to break up any doors in quest of the rebel. REPLIED, 1mo. *Pactis privatorum derogatur jure publico.* 2do. A messenger was fined at Privy Council for breaking up a writer's closet where his writs lay; and may be embezzled by the messenger's associates, though he should be answerable for his men. But the second answer took off his defence *in totum, viz.* That they offered to prove he accepted simply, without any such quality.

The Lords remitted the cause back to the Lyon Herald. *Vol. I. Page 640.*

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1694. July 28. ALISON FLETCHER, Petitioner; and ANNE LOCH *against* The EARL of SOUTHESK.

ALISON Fletcher, relict of John Graham, postmaster, on a bill, gets a year's