

HAILES. My difficulty still is as it has been, on account of the decision of the Court in 1756, *Duke of Gordon* against *M'Pherson* and *Kinguissie*, and the argument, from the analogy of informal warnings there used. A like decision was repeated about 1766, *M'Lean of Drimnin* against *Cameron of Glendissery*.

PITFOUR. The capital argument for the tenants lies in this, that the Act of Parliament requires warning forty days before Whitsunday: If there is a singular term like Beltane, still the general term must be followed; because I must have time to find out another possession. In the case of a tack expiring at Martinmas, you must give a warning forty days before Whitsunday. You must not cut off the *induciæ* by amending the libel, though you may cut off from the form of the action. It has been said, that warning to remove at Whitsunday 1769, implies warning to remove at Whitsunday 1770. *Answer*. The contrary was understood in the Duke of Gordon's case; and, indeed, how can a tenant fix himself in a possession when warned to remove at an uncertain term.

KAIMES. The Act of Parliament can never mean, that, if a man is to remove at Beltane, he must be warned forty days before the Whitsunday preceding. If the term of removing is different from the common term, then we must determine from analogy; *i. e.* forty days before the term.

COALSTON. If that is law, then the Court has erred in ten different cases since I sat here.

On the 6th February 1770, "The Lords repelled the objection; and found that the tenants must remove at Beltane 1770;" adhering to an interlocutor, 19th December 1769.

*Act*. H. Dundas. *Alt*. Ilay Campbell.

*Reporter*, Monboddo.

*Diss*. Pitfour, Coalston, Strichen, Stonefield, Monboddo.

1770. February 13. The ROYAL BANK of SCOTLAND against ADAM FAIRHOLM of Greenhill.

#### ADJUDICATION.

Stock of the Royal Bank of Scotland adjudgeable.

[*Faculty Collection*, V. 46; *Dictionary*, Appendix I.; *Adjudication*, No. 3.]

MONBODDO. Bank-stock is an incorporeal subject. The pursuers have only a right to the profits accruing to the company, and having *tractum futuri temporis*. Adjudication is therefore the proper diligence. The Act of Parliament, 6th Geo. I., and the charter, speak of attachments and arrestments. Attachments must be something of the nature of arrestments. Strange, if creditors were to be debarred from every sort of diligence. Yet this is the argument for the Bank.

PRESIDENT. If the argument for the bank is good, every Peer ought to vest his estate in bank-stock. His person is safe by law; his stock is secure from arrestment by the charter and from adjudication by the argument for the bank.

PITFOUR. I do not doubt of the power of the king to grant the charter. The clause subsists as long as a man is in life, and can transfer; but, if a man can no longer transfer, there must be another remedy. Adjudication is all that we have for a herry water-net; many subjects, not strictly heritable, may be carried by adjudication; such as the *jus mariti*, &c. There are declaratory adjudications known in law; because, where there is a right, there must be the means of explicating that right.

On the 13th February 1770, "The Lords found the bank-stock adjudgeable."  
*Act. R. M'Queen. Alt. A. Lockhart.*  
*Reporter, Pitfour.*

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1770. February 4. JANET THOMSON *against* HUGH M'KAILL.

*PACTUM ILLICITUM.*

A marriage-brokage obligation *contra bonos mores*, and not actionable.

[*Fac. Coll. V. 50 ; Dictionary, 9519.*]

PRESIDENT. The first question is, Whether is this obligation actionable? *Second*, Whether Janet Thomson has performed? As to the first, the stipulation is *contra bonos mores*: In giving any one assistance towards matrimony, there must be no lucrative stipulation. It is *turpe* to bargain money. The consequences must be fatal to society. It is a shameful trade, no matter whether concerning a match with one woman or with any woman: In both cases the match-maker is *maquignon de chair humaine*. I will say nothing of the decree of the House of Peers, in *Lady Mary Herbert's* case. That house may decide upon large principles of equity; but I think the Chancellor's judgment was right. This negotiation was carried on without the approbation of some of the parents. The young woman's father knew nothing of it. Dallas urged on the poor weak lad. He, in effect, says,—“Marry the woman against her father's will, or without his knowledge:” that is, “Be as unhappy as you please, provided I get my nine guineas.” Plain that M'Kaill knew nothing of the marriage till after it was consummated. The young woman also was deceived by false representations of the state and fortune of the young man. I also doubt as to the condition of the contract being fulfilled. By the condition, a marriage-contract was required, and this implied the consent of parents.

COALSTON. No argument has been pleaded, here, in support of the obliga-