

to influence this Court. Bills of exchange were circulated in England, while there was no law for them. At that time they passed among merchants, and yet courts of justice could not regard them.

ELLIOCK. The interlocutor is right. The privileges of bills of exchange are known; they are adopted all over the world. Promissory-notes are not universally received in practice, particularly not in Holland. With us, very lately, they were not so much as considered to be documents of debt. In England the authority is given them by degrees. The first statute to that effect was temporary. The opinion of merchants will not make law. If I give a bank-note out of my hand, and the bank does not pay, will there lie recourse against me?

JUSTICE-CLERK. In a matter of law, I must judge according to my own opinion of law. This decision may affect the interest of many individuals, but I do not see the necessity of promissory-notes. A decision of the Court, checking that practice, would be of public utility. Why allow merchants to grant promissory-notes instead of bills? In England the case is very different, because promissory-notes and bills are upon the same footing. If merchants, for their own conveniency, will grant promissory-notes, they may add *with recourse*, and then they will be bound with their own covenant.

PRESIDENT. If this had been a universal practice, we should have had another sort of opinion.

On the 7th March 1771, "the Lords advocated the cause, sustained the defence, and assoilyied;" adhering to their interlocutor of 25th January 1771.

*Act.* A. Gordon, jun. *Alt.* G. Fergusson.

*Reporter*, Coalston.

*Diss.* Monboddo, Coalston, (who was for inquiring further into practice.)

1771. June 13. DAVID GRAY *against* ROBERT REID.

#### JURISDICTION.

Jurisdiction, Act 20th Geo. II., c. 43. Burgh of Barony of Kilmarnock, If independent of the Baron?

[*Fac. Coll. V. 266; Dict. 7685.*]

MONBODDO. As to the jurisdiction of a burgh, it matters not *who* is the superior, providing the jurisdiction is independent.

KAIMES. I am of the same opinion, and am glad to be so, as it is of great moment that large societies of men have the means of action within the place of their residence.

PRESIDENT. At first I doubted, because of the words of a statute, which I greatly esteem. The words of the statute are strong, but I think they relate

not to this case. If the superior does not name magistrates, the community has the power of naming; so that there seems an inherent jurisdiction in the community. Such is the case in the *Burgh of Wick*, and such, in part, in the *Burgh of Aberbrothock*. There is a difference between the interference of a baron and a right created in favour of a baron.

JUSTICE-CLERK. The baron cannot recal the exercise of the jurisdiction, or change the bailies named. The statute relates to a jurisdiction momentarily in the baron, and revocable every hour, whereby the exercise of the jurisdiction and the existence of the judge depended on the baron's pleasure. It was this unlimited and arbitrary power which the statute wisely abolished.

On the 13th June 1771, the Lords found that the community of the burgh of barony of Kilmarnock, and the jurisdiction belonging to the magistrates thereof, is "independent of the baron, and therefore repelled the reasons of suspension;" adhering to Lord Auchinleck's interlocutor.

Act. J. Boswell. Alt. D. Dalrymple.

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1771. June 21. MRS MARGARET PORTERFIELD against HOUSTON STEWART NICHOLSON, Esq.

WITNESS—OBJECTION OF RELATIONSHIP—AGENCY.

[*Faculty Collection*, 160; *Dictionary*, 16,770.]

MONBODDO. Modern practice has so much relaxed the severity of objections to witnesses, that I am not sure how the law now stands. *Lady Maxwell* naturally took a share in the inquiry as to this affair: she ought not to have been called as a witness, both on account of relation, which is a good objection when there is no penury, and also on account of her acting as agent. She acted as an agent, and even improperly in that character, for she took down in writing what the witnesses said, and read it over to them, and asked them if they could stand to it. This was equal to a precognition, and was in a manner tying down the witnesses to adhere upon oath to their declarations.

GARDENSTON. *Lady Maxwell* was no agent; she only reported what she had heard or knew.

BARJARG. There is no *penuria testium*. The objection on account of acting as an agent is strong.

PRESIDENT. Many witnesses may have been examined in this cause; but there is an exceeding *penuria testium* as to the only fact wherein *Lady Maxwell's* evidence is desired.

KAIMES. I would reserve the question as to *Lady Maxwell's* oath to the end of the cause, so that the question may be tried without it, and then we may see whether there is any occasion for it.

JUSTICE-CLERK. The objection, on account of relation, is generally good;