

1773. *January 14.* MARY M'PHERSON, Spouse of Edward M'Intosh of Borlum,—*Petitioner.*

HUSBAND AND WIFE.

[*Dictionary*, 6052.]

PRESIDENT. I see the necessity of the application, but I doubt of its being formal, as there is no process in Court; and as we do not know, in the capacity of Judges, that *Borlum* has left the country, I think that the proper way would be to present a bill of inhibition, and to have it passed *causa cognita*, upon proof being brought of the husband's absence. I therefore would remit to the Ordinary on the Bills, to whom the bill of inhibition may be presented accordingly.

On the 14th January 1773, "The Lords remitted the petition to the Ordinary on the Bills."

For the petitioner, Dav. Dalrymple.

1773. *January 15.* SIR WILLIAM FORBES and OTHERS *against* JAMES RAMSAY and OTHERS.

SALE.

[*Supp. V.* 583.]

MONBODDO. I did not think that so much could have been said for the pursuers in this case. Yet I am of the opinion of the interlocutor. Drummond was under no obligation to apply the materials pointed for finishing the houses of the pursuers. He remained proprietor of the materials, and consequently his creditors might point them. The pursuers might have charged Drummond on his contract, and then pointed the materials.

AUCHINLECK. Had the materials been lying in a carpenter's shop, there would have been no pretence for claiming them: there is as little *here*.

KAIMES. Had the materials been *in actu proximo* of being used, I should have had a doubt. Drummond would have been *in pessima fide* to sell the materials in controversy.

On the 15th January 1773, "the Lords found the pointing regular and effectual;" adhering to Lord Gardenston's interlocutor.

*Act.* Ilay Campbell. *Alt.* R. Cullen.