

BRAXFIELD. I am clearly of opinion that action lies, on the statute 1695. Any difficulty in the cause is removed by Forrest being a pursuer along with Mr Douglas. Besides, Mr Douglas is a joint-proprietor: the family of Douglas was never totally denuded. If the run-rig had been owing to the act of feuing, there might have been a doubt. The anterior possession, previous to the feuing, appears to have been promiscuous and by run-rig. A division would be competent to every one of the feuars, and so also to the superior, who has retained the property of part of the lands. It is not necessary that the statute 1695 should, in its execution, be beneficial to every party: if you have not been made worse, you have no reason to complain that others are made better.

MONBODDO. I should have doubted much, were it not for the decisions of the Court. A burgh of barony is as much a corporation as a royal burgh. I am also moved with the argument of Lord Auchinleck, reporter. It does not appear that the possessions were originally run-rig or run-dale; they have become so by accident.

On the 21st January 1777, "The Lords found that the division must proceed on the Act 1695, so far as relates to run-rig lands; but that the division as to commony cannot proceed on this libel."

*Act. R. M'Queen, C. Brown. Alt. A. Crosbie.
Reporter, Auchinleck.*

1777. January 25. JAMES AFFLECK *against* DAVID WILLIAMSON.

WRIT—MANDATE.

How far an Overseer, subscribing a Note for the Company who employ him, without mentioning by Procuration, is personally liable for such Subscription?

[*Fac. Coll. VII. 99; Dict. App. I. Writ, No. I.*]

AUCHINLECK. Williamson does not bind himself, but only Sheriff and Company. If Sheriff and Company acknowledge themselves bound, Williamson is no farther concerned.

BRAXFIELD and ELLIOCK said, That it consisted with their knowledge that such notes were frequent in Lanarkshire and Dumfries-shire, and that they passed currently from hand to hand; but that the person signing them was never understood to be personally bound in payment.

COVINGTON. I supposed that the signer of such notes was wont to pay them when they became due.

PRESIDENT. That is altogether accidental, and it depends on the fact of the signer continuing clerk, if he pays it as clerk, not as signer of the notes.

On the 23d January 1777, "The Lords assoilyed Williamson, the defender;" altering Lord Covington's interlocutor.

Act. Allan M'Connochie. *Alt.* Alexander Murray.

1777. January 29. CAPTAIN JOHN DALRYMPLE *against* JAMES JOHNSTON and OTHERS.

INSURANCE.

When a Ship is short insured, the Owner is to be held as insuring himself to the extent of the Deficiency.

[*Fac. Coll. VII. 477 ; Dict. App. I. Insurance, No. II.*]

GARDENSTON. The premium of insurance cannot be brought *in computo*, for it would not be affected by the loss either of vessel or cargo. I should think that the freight ought to pay, because the freight was interested in the fate of the ship. But here there comes under our consideration, What is the practice of London? for the Glasgow policy refers to that practice. Unless evidence is produced to get the better of what is already produced, I am for holding that, by the London practice, freight does not come *in computo*.

MONBODDO. On abstract reasoning, premium ought to come *in computo*; and, as to freight, it is part of the value of the voyage. It is true that, if the voyage is not accomplished, there would be no value; but this is the very reason why the freight should be insured.

BRAXFIELD. The proprietor, in the case of short insurance, must be presumed to stand insurer for himself to that extent, and so to bear his share in the loss. No person is entitled to insure beyond his real interest. The question is, Whether are you entitled to insure or cover both freight and premium? If you are, then, if you fail, you must be understood in so far to insure short.

JUSTICE-CLERK. If we go back to the original of the implied contract, according to the custom of the Rhodians, we shall find nothing unless as to cargo and ship. There is a gambling spirit among merchants, and hence insurance was wont to be made, value or no value; but the Legislature interposed, and prohibited such gambling. Practice indeed has indulged the owners of goods with liberty to insure the premium and freight. The question is, What will be the consequence when premium and freight are not insured? There is a distinction between the *ipsa corpora* and the premium and freight. The value of the goods is a thing absolute in its nature; for the presumption in reason is, that goods, on being resold, will yield at least the price at which they were purchased. The other things do not add to the value *absolutely*; for, until the goods come to the port of destination, you cannot say that they are worth the addition of the premium. I apply the same prin-