

On the 8th December 1780, "The Lords found Captain Napier liable in damages and expenses;" altering Lord Monboddo's interlocutor.

Act. A. Crosbie. *Alt.* A. Murray.

Diss. Covington, Westhall, Monboddo, Stonefield, Braxfield.

N.B. Syme did not insist against the inferior officers: so they were assoilied, although an interlocutor of the Ordinary, in absence, stood against them.

1780. December 9. WILLIAM BISSET *against* DAVID BALLARDIE and OTHERS.

THIRLAGE.

[*Faculty Collection, VIII. 52; Dictionary, 16,063.*]

GARDENSTON. We must judge by principles, and not from expediency. The proprietor of the mill cannot alter the servitude originally constituted. The obligation is inherent and perpetual.

ALVA. This true in general; but acquiescence may vary the case. The mill was built *bona fide* for the benefit of the thirle; and Bisset did not object or interpel the proprietor.

COVINGTON. There is here a prædial servitude; and the mill is the dominant tenement. The mill is down; and unless it is rebuilt the thirlage is gone. Colliers, who are *astrecti glebæ*, have been obliged to work at another colliery equally commodious, when the master had no work to employ them in. The same is the case as to servitudes of roads: the roads may be varied for the general advantage; and he who is possessed of the servitude will not be heard to complain of the alteration.

PRESIDENT. I admit that the site of a mill cannot be changed in the general case. But if a mill falls, and is rebuilt at a more convenient place, although at a greater distance, can the servient tenement complain? It is said that the mill is placed on another tenement; but what then?—still the condition of the servient tenement is no worse than it was.

HAILES. There is no necessity for the mill of a barony being situated within the barony. *Here* the defender saw the mill built at a great expense by the proprietor, for the conveniency of the thirle, and he did not complain. What is he now aiming at?—To be exempted from in-town multures at that very mill to which, if he were exempted, he would repair and pay out-town multures; a plain proof that he has suffered nothing by the change of the site of the mill, and that he is grasping at an advantage.

MONBODDO. If a mill falls, the question is, Where ought it to be rebuilt? It may be rebuilt at some distance from the old one: here it is built, not on the lands of the same barony, but still on the lands of the same baron.

KENNET. The consent of the servient tenement ought to have been obtained previous to the erection of a new mill.

BRAXFIELD. The proprietor is not entitled to make the condition of the thirlage worse than it was before; but, when its condition is made better, the servient tenement cannot complain. Thirlage is generally called a servitude; but, in many particulars, it debords from a servitude: it falls with more propriety to be considered as a mutual contract. The favour originally was as much done to the sucken as to the proprietor. The thirle made no objection while the mill was building. The contract was implemented *bona fide* by the proprietor: and here an undue advantage is attempted to be taken by the person astricted.

COVINGTON. How can thirlage be a mutual contract? For the proprietor is not bound to keep up the mill.

PRESIDENT. He would be bound were the sucken to require it; which, however, is not likely to happen, as out-town multures are higher than in-town, and as there is no scarcity of mills.

On the 9th December 1780, "The Lords found Bisset liable in in-town multures;" adhering to the interlocutor of Lord Braxfield.

Act. A. Crosbie. *Alt.* ———.

Diss. Gardenston, Kennet, Westhall.

Non liquet, Ankerville, (who happened to be in circumstances similar to those of the proprietor of the mill.)

1780. December 12. BANK OF ENGLAND *against* The BANK of SCOTLAND and OTHERS.

BANKRUPT—RIGHT IN SECURITY.

Act 1696, c. 5.

[*Faculty Collection*, VIII. 72; *Dictionary*, 14,121.]

MONBODDO. Upon reading the heritable bond, a doubt *occurred to me* that the heritable bond was not granted for a precise sum, but for a security as to bills discounted, or to be discounted to the amount of L.160,000. It *now* appears indeed, that, at the time of granting the bond, L.160,000 *was* advanced by the Bank of England; but *that* does not appear from the bond itself.

COVINGTON. The words of the Act 1696 relate to debts posterior to infeftments. The Bank of England cannot change its mode of proceeding: and if its security is not good, it will never interfere again to support Scots credit. The argument charges Mr Alexander with a direct fraud, in deluding the Bank of England by a security of no value. No one can suppose that Mr Alexander was to have repaid the sum of L.160,000 sterling in the space of two months. That the security was good for the original money advanced is clear, even from the words of the statute 1696. There is *no novum debitum* here; nor is there any collateral security in any other sense than as every heritable bond is a col-