

1785. July 21. JOHN GOODFELLOW *against* ANDREW MADDER.

BILL OF EXCHANGE.

Fraud on the part of the acceptor.

[*Faculty Collection, IX. 353 ; Dictionary, 1483.*]

JUSTICE-CLERK. In the case of *Tenant*, there was a specific condescence of fraud to be proved by unexceptionable witnesses ; but here the suspender does not offer to prove the fraud by witnesses,—he desires first to have his party examined, that, in consequence of such examination, he may be enabled to condescend on witnesses. The same objection might be made to payment of every bill in the circle.

BRAXFIELD. I agree in the principles : but the pursuer is not an onerous indorsee. Besides, it is admitted that the debt is not fairly set furth, as to its nature, in the bill.

PRESIDENT. Condescend on fraud, and I will admit every sort of proof : but that is not the case here ; it is only said that, if the party be examined, something may be discovered.

On the 21st July 1785, “ The Lords found the letters orderly proceeded ;” adhering to the interlocutor of Lord Monboddo.

*Act. H. Erskine. Alt. Ro. Dalzell.*

1785. July 22. WILLIAM CAMPBELL of Craigie *against* ROBERT SILLER.

SEQUESTRATION—TACK.

A lease having been granted of lands which were Sequestrated after its date, but before the term of entry, the lessee found entitled to require possession in implement of the contract.

[*Faculty Collection, IX. 372 ; Dictionary, 15,223.*]

JUSTICE-CLERK. I should be sorry if it were law, that one under diligence should have it in his power to prorogate a tack for 99 years, which is a term nearly equal to a perpetuity. The factor ought to have come to the Court and asked advice. We must determine now as we should have advised then. We certainly would not have allowed the factor to put the tenant in possession, nor can we allow the tenant to remain in possession.

On the 22d July 1785, "The Lords sustained the reasons of reduction;" altering the interlocutor of Lord Braxfield.

*Act.* R. Blair. *Alt.* W. Miller.

*N.B.* This judgment afterwards altered.

1785. July 22. DOUGLAS, HERON, and COMPANY *against* JAMES BROWN in Scroggs.

#### INHIBITION

Strikes not against bills, though posterior, if granted in the place of such as were prior to it.

[*Fac. Coll. IX. 349; Dict. 7070.*]

[THE Court had no difficulty as to the validity and general effect of the inhibition executed, though not recorded at the date of the bill.]

ESK GROVE. The purpose of an inhibition is, that the debtor may not have it in his power to do any thing prejudicial to creditors: *that* is not the case here, no accumulations are sought, and there is nothing that varies the case from what it was before the granting of the new bill.

HAILES. We ought to be cautious. The bankrupt asserts that the new bill, though for a different sum, came in place of the old bill: he might also assert that the old bill, whatever the sum in it was, came in place of another still older,—so the effect of the diligence of inhibition will be regulated by the averment of the bankrupt: it does not follow, from an old bill being produced, with the name of the acceptor taken away, and a new bill being produced, having the name of the acceptor remaining, that the one has come in place of the other.

SWINTON. When a bill is retired and another granted, the old debt is paid and a new one contracted: this puts the creditor in a better situation than he was formerly, both as to summary diligence, and also as to prescription, which then begins to run anew.

JUSTICE-CLERK. An old debt, fairly and honestly contracted, will not be hurt by a renewal of it. The law cuts down new debts alone posterior to the inhibition.

MONBODDO. I cannot hold the *former* debt to have been extinguished by the *latter* obligation.

PRESIDENT. There is no legal evidence that the new bill came in place of the old one. The declaration of the bankrupt is nothing. If, willingly and wottingly, an *old* bill be retired and another granted, I hold it to be a new bill.

BRAXFIELD. If evidence be produced of the fact, I hold that a new document does not extinguish the old debt. He quoted the case of the *Creditors of Wardrobe of Cults.*