

APPENDIX.

PART I.

SALE.

1799. November 26.

JAMES MACARTNEY *against* The CREDITOR of WILLIAM MACREDIE.

WILLIAM MACREDIE purchased some cattle from James Macartney, and granted his bill for the price, payable three months after date.

The cattle were put under charge of two servants, one belonging to each of the parties, who immediately set out with them for Macredie's farm.

Macartney having conceived some suspicion of Macredie's solvency, on the same day stopped the cattle on the road, before reaching the place of destination, but afterwards allowed them to proceed, only on receiving the following missive from Macredie: "I acknowledge to have bought and received from you 21 beasts, at the agreed price of £5. 7s. 3d. Sterling *per* beast, which I granted my acceptance for, of £116. 15s. Sterling; and if the bill is not punctually paid when it falls due, James Macartney is to be allowed to take back his own cattle, and to pay William Macredie £10. Sterling for grass."

Macredie stopped payment some weeks before the bill became due; and the cattle were included in a sequestration of his stock, obtained by his landlord for payment of his rent. In other respects, the cattle were *in medio*, as the creditors had taken no steps to attach them by diligence.

Macartney applied to the Sheriff for recovery of the cattle in terms of the missive.

This was at first opposed by the landlord; but the hypothec being satisfied *aliunde*, the other creditors of Macredie contended, that the cattle were his property, and that Macartney had merely a personal claim for his price.

At this time Macredie had not been rendered bankrupt under the act 1696.

No. 1.

A person who had sold some cattle, and taken the purchaser's bill for the price, payable three months after date, having immediately become suspicious of his solvency, stopped the cattle on the road to his residence, but afterwards allowed them to proceed, on obtaining a missive, bearing, that if the bill was not paid, the seller might take back the cattle, on giving a fixed allowance for their grazing. —The purchaser stop-

No. 1. ped payment a short time before the bill became due, and, in competition with his creditors, the seller was found entitled to take back the cattle, which had remained in possession of the purchaser from the date of the missive.

The Sheriff found that the property of the cattle was transferred to Macredie, and that the granting of the missive being collusive, his creditors could not be affected by it.

Lord Meadowbank refused a bill of advocation; but remitted to the Sheriff to recal his interlocutor, and to find, that, by the missive in question 'the sale of the complainer's cattle to William Macredie was not suspended, but only a resolution of the sale stipulated, in the event of the price not being paid in terms of Macredie's acceptance; and that as Macredie became bankrupt before the event happened on which the bargain was to be resolved, the agreement to resolve the bargain cannot afford the complainer any claim to the *ipsa corpora* of the cattle, in competition with the other creditors of Macredie; so that the complainer must be satisfied with ranking for the price of the cattle, as originally stipulated, or for damages for non-implement, if he conceive these to exceed the said price.'

Upon a petition against this interlocutor the bill was passed.

The cause was afterwards reported by the Lord Probationer Balmuto.

The Lords (19th June 1790) 'found the advocator entitled to restitution from William Macredie, and his creditors defenders, of the cattle in question, upon payment of £10. Sterling of grassmail, or to payment of the contents of the bill granted by William Macredie for the price thereof.'

A petition against this interlocutor was followed with answers.

The creditors.

Pleaded: The property of the cattle was completely transferred to Macredie by delivery. Macartney had, therefore, no right to detain them on the road; for the decisions which have established, that goods may be stopped *in transitu*, apply only to the case where they are stopped before being completely delivered from the seller to the purchaser, as, for instance, in possession of a carrier or shipmaster; whereas here, the delivery of the cattle was completed, and Macartney had no business with the after-disposal of them.

Nor is it of any consequence that they had not reached Macredie's farm. He might have had no farm to carry them to; and it might be said, with equal propriety, that cattle purchased by a dealer, who meant to carry them to the south of England in order to sell them there, without having any place of his own for keeping them, might be reclaimed at any time while in his possession, as in the present case.

The missive was not *suspensive*, but merely *resolutive* of the sale in a certain event, and therefore gave the seller no real right in the subject of it; Stair, B. 1. Tit. 14. § 4; Ersk B. 3. Tit. 3. § 11.

Supporting the preference claimed, would give room to many frauds against creditors.

Answered: The right of a person who has delivered goods to a carrier or shipmaster, for behoof of the purchaser, to stop them at any time before they have arrived at the place of their destination, on becoming suspicious of the

solvency of the purchaser, is fixed by repeated decisions ; 4th December 1788, Allan and Stewart against Creditors of Stein, No. 45. p. 14218 ; 23d July 1789, Young against Stein, No. 46. p. 14218. although, in these cases the property of the goods be previously devolved on the purchaser ; and there is no room for distinction between these cases and the present. Accordingly Macredie acquiesced in Macartney's detaining the cattle, and, by the missive in question, entered into a new bargain with respect to them, by which a conditional sale only was constituted.

No. 1.

Nothing is more common than for parties to stipulate with regard to subjects delivered by one to the other, alternatively, that a fixed price shall be paid for it on a certain day, or that it shall be returned with an allowance for the interim use of it. In such cases, the sale is conditional, and the property is not transferred till the condition be purified ; Stair, B. 1 Tit. 14. § 4 ; 9th March 1785, Young against Dunn, No. 29. p. 14191. Such was meant to be the effect of the missive in question.

The creditors can qualify no prejudice from it, as, had it not been for it, the cattle would never have been on their debtor's farm ; and they were bound to inquire into the nature of his right to them.

The Lords, on the grounds stated by Macartney, by a great majority adhered.

Lord Ordinary, *Bannatyne*.
Clerk, *Pringle*.

For Macartney, *D. Cathcart*.

Alt, *Gillies*.

D. D.

Fac. Coll. No. 145. p. 324.

1801. *January 23.* JOHN GRAY *against* JAMES HAMILTON and Others.

THE grandfather of James Hamilton, in 1740, obtained a feu of the three farms of South Craigend, North Craigend, and Garthamlock. All these farms lay contiguous, and were thus described in the feu-charter : “ The lands of South Craigend, and whole houses thereon, consisting of sixty acres or there- by, with liberty and privilege to the tenants and possessors of the said lands of South Craigend, of casting and winning peats and turf in Craigend Muir moss, for the use of their families allenaryly ; the lands of North Craigend or Comedie, consisting of ninety four acres or thereby, including the moss thereon, and the lands of Garthamlock, and housing thereon, consisting of one hundred and forty-one acres or thereby, burdened with the present highways, with the hail parts, pendicles, and pertinents of the said respective lands.”

In 1795, James Hamilton exposed two of these farms to public sale, viz. South Craigend and North Craigend. In the articles of roup, the description of the lands was taken *verbatim* from the original title-deeds. In particular,

No. 2.

A deduction from the price of a farm on account of its falling short of the measurement specified in the articles of roup, refused.