

APPENDIX

PART I.

MOVEABLES.

1806. June 17. HENDERSON *against* GIBSON.

JAMES GIBSON of Ingliston, bought four bullocks in the public market in Edinburgh. A short time afterwards, he observed an advertisement in the newspapers, giving notice, that four bullocks of a similar description, had been stolen from Malcolm Henderson at Bonhard. He immediately informed that gentleman of the circumstance, who, upon inspecting the cattle, declared they were the bullocks which had been stolen, and required them to be immediately given up. This being refused, an action was raised before the Sheriff of Edinburgh, at the instance of Henderson against Gibson, to have the cattle delivered, or to find him liable for their value. The Sheriff found, that the pursuer was entitled to recover the cattle, upon proving his property, and that they had been stolen; and allowed a proof. Upon advising the proof, he ordained the defender to deliver up the bullocks, on payment of grass mail, for the time they were maintained by him. It having been thought expedient to sell the cattle, the Sheriff ordered the pursuer to condescend on their value, and found the defender liable for the amount.

The cause having been removed by advocacy to the Court of Session, the Lord Ordinary, upon hearing parties, repelled the reasons of advocacy, and remitted the case *simpliciter* to the Sheriff. Against this interlocutor, Gibson presented a petition to the Court; and

Pleaded: It is essential to the interests of commerce, that a *bonâ fide* purchaser at a public market should be secure. Accordingly, by the law of England, it

No. 1.

Rei vindictio lies for recovery of stolen goods from purchaser at a public market.

No. 1. is held that all sales at public markets are good, not only to the parties but to all having any right or property in the subject; Blackstone, vol. 2. p. 449. By the ancient law of Scotland, indeed, the contrary doctrine prevailed; but it was at the same time enacted, that purchasers of cattle at public market should demand a *borgh of haimbald*, or security to warrant the possession to the purchaser, who was liable in heavy penalties, if the subject should be afterwards evicted as having been stolen; Reg. Majes. B. 1. Cap. 18; Ferguson against Forrest, 19th March 1639, No. 3. p. 9112. As this custom has now gone into disuse, the purchaser at a market has no means of security; and it is highly expedient that the old law, adapted to this state of matters, should be modified to the existing circumstances of the country, in the same manner as has been done in other cases, when the ancient law was deemed incompatible with the present state of commercial transactions.

But the petition was refused with answers. It was observed, that though a landlord's hypothec was not good in a competition with a purchaser at a public market; it was very different with regard to a *vitium reale* in the subject.

Lord Ordinary, *Glenlee*.
Clerk, *Scott*.

For Petitioner, *W. Clerk*.

Agent, *David Christie*.

J.

Fac. Coll. No. 253. p. 567.

No. 2. 1807. November 13.

Money being inclosed in a letter, which was wafered, addressed to a certain person, and committed to a servant to be given to a runner to the post-office; the person to whom the letter is addressed was held to have an exclusive right to receive this money in a competition with a trustee (not judicial) for the creditors of the sender, tho'

WILLIAM and JOHN CRAWFORD against WILLIAM KERR.

GEORGE HENDERSON owed Messrs. William and John Crawford £296. With a view of paying this debt, on the evening of the 30th March, he wrote the following letter:—"Gentlemen, Inclosed is one half of bank notes and a bill, which, when you receive the others, per next post, will make £296, to pay my acceptance to you due to-morrow; the 2^d I will pay you the first time I am in Leith. I am," &c.

Having indorsed the bill to Messrs. Crawford, he then put it with the half notes into this letter, shut and wafered it, directed it to Messrs. Crawford, and gave it, with a penny, to a servant, to be given next morning to a runner who was in use to carry his letters to the post-office. The servant put it in a place where his letters were usually put, to be ready for the runner, who came early in the morning.

Having finished this letter, Mr. Henderson then entered in a day-book, which he kept, the bill and notes as remitted, but he post-dated this entry, making it the 31st March. The other half of the notes were left in his pocket-book.

Betwixt the hours of four and five the next morning, Mr. Henderson died suddenly.