

the delivery at Eyemouth was *constructive* only, and consequently did not prevent stoppage *in transitu*.

No. 3.

On the second point, many of the Judges thought the intimation to the purchasers on the morning of the 15th April, sufficient to effect the stoppage; and nearly the whole Court were of opinion, that the shipmaster being the custodier for behoof of both parties, private intimation to him was effectual. And although there was no positive evidence of such intimation, yet the circumstances of the case created so strong a presumption that it had been actually given, that the Court seemed to hold the fact as established.

It was also observed from the Bench, That Sinclair and Williamson, by taking possession of the grain after their avowed insolvency, were guilty of a wrong, by which neither they nor their creditors ought to profit.

The Lords altered the judgment of the Judge-Admiral and Lord Ordinary, and found the sellers entitled to the proceeds of the grain which had got into the possession of Sinclair and Williamson.

Lord Ordinary, *Craig*.
Alt. *Geo. Jos. Bell*.

For Robertson and Aitken, *Baird*.

R. D.

Fac. Coll. No. 245. p. 549.

1807. *November 27.*

THOMAS BURNS, Petitioner.

THE superiority of certain lands in the parish of Linlithgow, belonging to the poor of that parish, were exposed to public sale, in the town-house of Linlithgow; by the minister and kirk-session.

The articles of roup bore, that the said superiority, which amounted to £175 of valued rent, "Should be exposed to public roup at the upset price of £180 Sterling, during the running of a half hour sand-glass, and the person offering the said sum, if no other shall appear, or the highest offerer at the outrunning of the glass, shall be preferred to the purchase. *2ds*, In the event of several offers being made, every offer after the first shall exceed the offer immediately preceding by twenty shillings at least, and become bound for the sums offered in terms, and upon the conditions of these articles."

The clerk of the roup having read the articles, stated, that although the articles bore that the subjects were to be exposed during the running of a half hour sand-glass, yet as a sand-glass was not at hand, and as a watch would measure the time with equal precision, the latter would be substituted, if the company had no objection. No objection was stated by those present, among whom was Mr. Alex. Monypenny, Writer to the Signet, and a watch was used.

The subjects were exposed, and the biddings continued till the price amounted to £250 Sterling. At this time Burns was the highest offerer; but about three or four minutes before the half hour expired, Mr. Alexander

No. 4.

Circumstances which constitute an irregularity in the manner of conducting a public roup.

No. 4. Monypenny entered the lists of competition. The bidding continued between these two parties, while the judge incessantly admonished them that the half hour was at the moment of expiry, and the offers succeeded each other with rapidity. Before Mr. Monypenny had finished bidding, and abandoned the competition, the half hour elapsed; and the petitioner, who was the highest offerer at the instant of its expiry, was declared by the judge to be the successful competitor, at the price of £275 Sterling.

Thus no means were taken, by stopping the watch, to prolong the period, although competition had not ceased. Mr. Monypenny protested against this procedure, and presented a bill of suspension and interdict, and the kirk-session raised a multiplepoinding, in which the two competitors were called. On the part of the kirk-session, no objection to the regularity of the sale was stated.

The Lord Ordinary pronounced the following interlocutor (13th February 1807): " Finds it to have been provided by the articles of roup, that the superiority should be exposed at the upset price therein mentioned, during the running of a half hour sand-glass, and the highest offerer at the outrunning thereof should be preferred to the purchase: Finds, that if such sand-glass had been used, it was competent for, and indeed the duty of the judge of the roup, by laying the sand-glass on its side, or making it run backwards to prevent it from running out so long as there appeared offerers bidding against each other: Finds that in this case, as the judge of the roup, for want of a sand-glass, made use of his watch, he ought to have managed it in some such way as the sand-glass might have been; but finds, as he did manage it, he made the time to expire, while the two competitors Mr. Burns and Mr. Monypenny were keenly bidding against each other, and the judge declared Mr. Burns to be the last and highest bidder, and so preferred him to the purchase: Finds that this was occasioned by the judge's misapprehension of what was his duty in such a case; therefore finds that the proceedings at the roup were irregular, and cannot have effect."

And the Lords (27th November 1807) refused a reclaiming petition, without answers.

Lord Ordinary, *Polkemmet.*

Act. *Monypenny.*

Alt. *John Fullarton.*

J. W.

Fac. Coll. No. 10. p. 31.

1808. June 28. THOMAS STEVENSON *against* JAMES DALRYMPLE.

No 5.

Delay in notifying the rejection of goods sent on commission, and using part of them,

DONALD MARTIN, agent for James Stevenson, merchant in Greenock, sold to James Dalrymple, soap-boiler in Falkirk, 22 tons of kelp, at £8 per ton, the selling price being at that time from £7 to £10. In the letters he wrote to Dalrymple, offering this kelp for sale, he mentions that it was " pretty good, " but not of the best quality," that he must deliver it at Greenock; and that,