

was the real value of this waste ground, for then the ground would have been let at L.20 *per* acre.

On the 22d February 1779, "The Lords found the heir of entail bound;" altering Lord Braxfield's interlocutor.

Act. R. Cullen. *Alt.* J. Swinton.

Diss. Alva, Elliock, Stonefield, Hailes, Ankerville, Braxfield.

N. B.—The number of dissenters was owing to the manner in which the vote was put; for there were Judges, as Braxfield, Elliock, and Hailes, who were willing to give relief to the pursuer, though not in that *large* way proposed in the vote and carried by the interlocutor.

1779. *February 26.* MESSRS GIBSON and BALFOUR *against* GEORGE GOLDIE.

ARRESTMENT.

An Arrestment betwixt the hours of four and six, preferred to one betwixt six and nine.

[*Fac. Coll. III. 45; Dict. 824.*]

BRAXFIELD. Goldie's arrestment in the hands of the managers and clerk is good; so that the only question is as to the priority of arrestment. When particular hours are mentioned, the meaning is, that, although the messenger is not certain as to the precise minute, he is certain that such a thing was done *between* one hour and another: This excludes any after hour. In this view, the two competing arrestments can never interfere.

HAILES. So it was determined, after very mature consideration, in the case of *Mrs Jean Cameron* and *Thomas Boswel*.

PRESIDENT. The argument in that case seemed conclusive on a case put. There is one arrestment between seven and eight, another between six and seven, and another between five and six: if the arrestment between seven and eight be considered as preferable *pari passu* with *that* between six and seven, it follows that the arrestment between six and seven is preferable *pari passu* with the arrestment between five and six; and consequently the arrestment between seven and eight, and that between five and six are on a footing. The same argument might be carried on from sun-rising to sun-setting, and the necessary consequence would be, that all arrestments executed on the same day are preferable *pari passu*; for this, there is no authority.

[The unavoidable consequence would be, that an execution of arrestment, between six and seven in the *morning*, would be preferable *pari passu* with one between six and seven in the evening; which is absurd.]

MONBODDO. Goldie's debt is not proved, and therefore his arrestment cannot compete with an arrestment on a debt proved.

[This was universally rejected, as reprobating all arrestment on a dependance, and all claims on a decret in absence.]

On the 26th February 1779, "The Lords preferred George Goldie;" adhering to Lord Auchinleck's interlocutor.

Act. A. Elphinstone. *Alt.* A. Crosbie.

1779. *February 26.* CREDITORS of Patrick M'Dowal *against* CHARLES MAC-DOWAL.

ANNUALRENT.

The Lords found, that distressed cautioners were entitled to charge interest upon interest.

[*Fac. Coll. VIII. 31; Dict. 532.*]

BRAXFIELD. When Mr Charles M'Dowal obtained his decret of valuation, the chequer was closed. I consider that decret as equivalent to a decret of sale at that period: all debts are innovated and all accumulated. If Mr M'Dowal, being cautioner for his father in L.1000, has paid L.100 of interest, and L.100 of interest is still due, he states himself creditor for L.1200: he can get *that*, and he can get no more: he cannot afterwards make any farther claim.

On the 26th February 1779, "The Lords found that the debt must be struck as at the time of the decret of valuation;" varying Lord Kennet's interlocutor.

Act. Ch. Hay. *Alt.* G. Ferguson.

1779. *February 26.* MESSRS M'CLURE and M'CREE *against* JOHN PATERSON and OTHERS.

PACTUM ILLICITUM.

Sale of Smuggled Goods.

[*Faculty Collection, VIII. 138; Dictionary, 9546.*]

BRAXFIELD. The subject of the present action is foreign spirits, in circumstances not enterable. The purchase was made on board a ship: no action can lie against the purchaser, because this is a *pactum illicitum*, and inferring a moral turpitude. I do not enter into the distinction between a *malum*