insolvent person may, by his oath, rank his creditors, and give something to one which will be taking something from another? Has the practice of the Court established this?

On the 31st January 1787, "The Lords found the claim competent; found that the missive letter does not interrupt prescription; but found *resting owing* probable by the oath of the bankrupt; and, as to Margaret Nisbet's debt, remitted to the Ordinary;"—altering the interlocutor of Lord Ankerville, Ordinary.

Act. Allan M'Conochie. *Alt.* Ch. Hay.

1787. *February* 2. ROBERT BOGLE *against* ROBERT DUNMORE and COMPANY.

SALE.

Property of goods on ship-board transferred on sale by indorsation of the bills of loading.

[*Fac. Coll. IX.* 470; *Dict.* 14,216.]

HAILES. It should seem that Dunmore and Company mean to introduce a new *hypothec* into the law of Scotland under the name of *retention.*

MONBODDO. I am clear for Bogle. The first question is, Whether there was a sale to him, and whether he pursues as purchaser? *Ex facie* there was a sale; and it is of no great moment how the price was to be applied. But, although there had been no sale, the question is as to possession. Monteith, the proprietor and seller, was in possession from the time of shipping, and after the goods were landed: possession is not only *facti* but *animi.* A decision, quoted from Lord Kaimes, expressly says so, on the principles of the Roman law. Dunmore says, that *he* was in possession, and therefore, that he may retain for every debt: he was no more in possession than the letter of lodgings is as to the *invecta* and *illata* beyond the hypothec for rent.

JUSTICE-CLERK. This is a very important question. I should be sorry to see the law of Scotland such as it is represented to be by Mr Dunmore. A bill of loading, signed by the shipmaster, obliges himself and his owners to deliver the goods to the proprietor. On a ship's arrival, the owners might dismiss the shipmaster; but could the owners detain the goods for former debts? This would put an end to commerce; for then no man could know on what footing he stood: the same principle has been adopted both by Lord Hardwick and Lord Mansfield.

BRAXFIELD. Possession may be continued *animo,* but it cannot be so acquired. If a bill of loading vest possession, how can there be retention? The corporal possession is in the owner of the ship, whether he acts by himself or by his servants. The owner or shipmaster becomes bound to deliver goods. *Here* there can be no compensation: but retention stands on a different footing than compensation. Compensation must be on liquid grounds, but retention

is competent for security of the obligations under which the holder has come for the bankrupt. Sale is a consensual contract, not completed without delivery. Objection is good against the purchaser as well as against the seller: in the noted case of *Hewit*, the House of Lords gave judgment on my principles.

MONBODDO. A sale may be completed symbolically. By the law of England there is such a thing as retention, else there would have been no room for the decisions pronounced by Lord Hardwick and Lord Mansfield.

ROCKVILLE. If bills of loading, by being conveyed, do not convey property, there is an end of commerce.

On the 2d February 1787, "The Lords repelled the defences."

Act. A. Wight. *Alt.* ———.

Reporter, Henderland.

Diss. Alva, Braxfield.

Non liquet, Henderland, Dunsinnan.

1787. *February* 6. ARCHIBALD M'AUSLAND *against* WILLIAM DICK.

NAUTÆ, CAUPONES, ET STABULARII.

The owners of stage coaches not answerable for the safe conveyance of money, unless where it has been delivered as such.

[*Faculty Collection*, *IX.* 476; *Dictionary*, 9,246.]

HAILES. Whatever may be the determination in this cause, it will not form a precedent; for all keepers of stage coaches will instantly advertise that they will not be answerable for money or bank-notes. It is impossible to suppose that Dick, or any other coach-master, could have meant to convey for sixpence a sum of two hundred pounds, which could not have been conveyed by the waggon for less than four shillings. In the waggon there is a place appropriated for the securing of money and bank-notes, so that they cannot be pilfered, and they are safe, unless the waggon itself should be carried off or plundered. In the stage-coach there is nothing of that kind, and there is no occasion for it, because it is not understood that money or bank-notes are to be transmitted by such conveyance.

MONBODDO. The Roman edict does not apply. The matter comes then to the practice of Scotland,—and the question is, Whether by it stage-coach hirers take in money as parcels? And this is denied.

BRAXFIELD. Upon the very principle of the Roman edict, *quod receperit salvum fore*, the defender ought to be assoilyied, for he did not undertake the charge of any money: *non recepit*.

JUSTICE-CLERK. When those public conveyers mean to take the charge of money, they exact a *premium* for the risk and the trouble.