

John Ramsay in prosecuting a forthcoming upon his arrestment, found the interest produced for James Lister preferable ;” adhering to the interlocutor of Lord Alva.

For Ramsay,—Edw. M’Cormick. *Alt.* J. Pattison.

1787. *August 8.* DAVID ROSS of ANKERVILLE and OTHERS *against* WILLIAM ROSS MUNRO of NEWMORE and his CREDITORS.

#### INHIBITION.

Inhibition not competent to render effectual, against creditors, a deed by which a person obliges himself, in favour of others, not to sell or impignorate his lands, nor to contract debt by which they may be burdened.

[*Dict.* 7010.]

BRAXFIELD. An inhibition does not give a right ; it only secures a right. Sir Thomas Hope thought otherwise, but no lawyer has adopted *his* opinion. In the case of the *Heirs of Barholm* and *Dewar of Vogrie*, an inhibition on an obligation to entail was found not valid against creditors. Hence I conclude that the deed 1765 is not effectual. Neither is the deed 1774 effectual ; for, by that deed, Newmore had a reversionary right, which may be affected by his creditors. But, as to the deed 1777, there is no ground of challenge proved against it at the instance of Newmore ; and the creditors who contracted after the date of that deed cannot object.

ESK GROVE. Before the Act 1685, lawyers were very desirous of tying up estates ; but they were at a loss to accomplish their purpose. The first difficulty that struck them was, How the interest of creditors could be provided for ? This induced Sir Thomas Hope to propose an inhibition as a public notice. But I consider the Act 1685 as excluding every mode of effectual entails other than those sanctified by that act. The deed 1765 is not in terms of a legal entail. I also agree with Lord Braxfield as to the deed 1774, and also as to the third point respecting the deed 1777. As Newmore might have made a present of his estate, or given it to his heirs, he might do the same, by means of trustees, for the behoof of the heirs, and no posterior creditor has right to complain.

MONBODDO. By the Act 1685 no man can put his estate out of commerce, and at the same time retain the fee. But the deed 1777 is one which the law cannot prevent ; for Newmore gives up every right of fee, and restricts himself to a liferent.

JUSTICE-CLERK. I was alarmed at seeing it argued, that, under the form of a contract for an imaginary *quid pro quo*, an inhibition could prevent the burdening of an estate with debt. This is adverse to the Act 1685, and also to the decisions in the cases of *Barholm* and of *Bryson*.

On the 8th August 1787, "The Lords, in respect that, by the deed 1777, Munro of Newmore was habilely denuded, sustained the reasons of reduction of the debts contracted posterior to the date of that deed."

*Act.* Adam Rolland, &c. *Alt.* R. Blair, &c.  
*Reporter,* Henderland.

---

1787. August 9. RICHARD HOTCHKIS *against* JAMES EYRE.

POINDING.

Act 20th Geo. II. c. 48. A poinding, commenced within the head burgh of a shire, must be completed at the market-cross of the burgh.

[*Fac. Coll. IX. 533; Dict. 10,542.*]

HAILES. Messengers ought to be kept within the exact line of their duty, from which, in our days, they have a strange propensity to depart. The pretence for terminating, at the market-cross of the Canongate, a poinding begun in Edinburgh, is, that the new bridge was not accessible at the time for carts. But, *1st*, How does it appear that poinded goods must be carried in *carts* to the market-cross? *2dly*, Can we suppose that the magistrates of Edinburgh would have refused, on application made to them, a temporary passage for the carts? *3dly*, If the passage by the North Bridge was inaccessible, why did not the carts go by Leith Wynd? And, if that passage should be found inconvenient, why not by New Street? It is a jest to say that that could not be, because New Street is private property; because, for the time, it is used by the public, and Leith stages go that way every day. *Here* the messenger made the apprisement in an obscure place as a market-cross, while it might have happened, and, it is said, did happen, that the friends of the debtor were attending at the market-cross of Edinburgh to redeem or purchase the goods.

PRESIDENT. The statute, 20th Geo. II., for the general conveniency of the subject, allowed some latitude to messengers; and this messenger does not seem to have gone beyond those powers.

ESK GROVE. I admit that messengers have a latitude by the jurisdiction act; but I do not see that they have any power to begin a poinding in *one* territory and complete it in *another*.

On the 9th August 1787, "The Lords, in respect that the poinding was commenced within the royal burgh of Edinburgh, found that it ought to have been completed within the same burgh, and remitted to the Ordinary to proceed accordingly;" varying the interlocutor of Lord Swinton.

For Eyre,—Alexander Fraser Tytler. *Alt.* H. Erskine.

---