

On the 22d July 1785, "The Lords sustained the reasons of reduction;" altering the interlocutor of Lord Braxfield.

Act. R. Blair. *Alt.* W. Miller.

N.B. This judgment afterwards altered.

1785. July 22. DOUGLAS, HERON, and COMPANY *against* JAMES BROWN in Scroggs.

INHIBITION

Strikes not against bills, though posterior, if granted in the place of such as were prior to it.

[*Fac. Coll. IX. 349; Dict. 7070.*]

[THE Court had no difficulty as to the validity and general effect of the inhibition executed, though not recorded at the date of the bill.]

ESK GROVE. The purpose of an inhibition is, that the debtor may not have it in his power to do any thing prejudicial to creditors: *that* is not the case here, no accumulations are sought, and there is nothing that varies the case from what it was before the granting of the new bill.

HAILES. We ought to be cautious. The bankrupt asserts that the new bill, though for a different sum, came in place of the old bill: he might also assert that the old bill, whatever the sum in it was, came in place of another still older,—so the effect of the diligence of inhibition will be regulated by the averment of the bankrupt: it does not follow, from an old bill being produced, with the name of the acceptor taken away, and a new bill being produced, having the name of the acceptor remaining, that the one has come in place of the other.

SWINTON. When a bill is retired and another granted, the old debt is paid and a new one contracted: this puts the creditor in a better situation than he was formerly, both as to summary diligence, and also as to prescription, which then begins to run anew.

JUSTICE-CLERK. An old debt, fairly and honestly contracted, will not be hurt by a renewal of it. The law cuts down new debts alone posterior to the inhibition.

MONBODDO. I cannot hold the *former* debt to have been extinguished by the *latter* obligation.

PRESIDENT. There is no legal evidence that the new bill came in place of the old one. The declaration of the bankrupt is nothing. If, willingly and wottingly, an *old* bill be retired and another granted, I hold it to be a new bill.

BRAXFIELD. If evidence be produced of the fact, I hold that a new document does not extinguish the old debt. He quoted the case of the *Creditors of Wardrobe of Cults*.

[But *there* it appeared that the creditors of old Wardrobe did not mean to contract with young Wardrobe, and only changed the shape of their securities.]

On the 22d July 1785, "The Lords repelled the objection to Brown's ground of debt."

Act. A. Abercrombie. *Alt.* W. Honeyman. *Reporter*, Braxfield.
Diss. Swinton, Hailes, Ellick, President.

N. B.—There seems more benevolence than law in this interlocutor. It considers the bankrupt as a neutral and a credible person.

1785. *August 2.* JAMES SPEDDING, ESQ. *against* HODGSON and DONALDSON and COMPANY.

BANKRUPT.

Proof of Absconding.

[*Faculty Collection, IX. 356 ; Dictionary, 1113.*]

ESK GROVE. *Resting owing*, in the narrative of a bond, presumes that there is an old debt ; but still the creditor may disprove this, by showing that it was not an old debt.

BRAXFIELD. If a search were of itself evidence of a bankruptcy, I should be very strict in interpreting the evidence of such search.

PRESIDENT. Search is a *presumptio juris*, but still the evidence from it may be redargued.

HAILES. The case of *Romanes of Lauder* is nothing to the purpose ; there a *search and not found* was returned, but it came out on proof, that Romanes was an idle man who lived alone,—that he had made an appointment with some idle companions to track hares in the snow,—that, on setting out for this expedition, he locked his door, and that, while he was thus absent, the messenger searched for him and could not find him. A search made, when the cause of absence was proved, had no weight with the Court. Here it is not said why the debtor was absent from home.

GARDENSTON. The petitioner admits that it would have been enough, supposing *repeated* searches. On what principle is it that *one* search is not enough ?

On the 2d August 1785, "The Lords found that the bankruptcy is sufficiently proved by the execution and the other circumstances of this case ; but, in respect that improbation is proponed, they allowed a condescence to be given in, the petitioner always paying the expenses incurred before the proponing of improbation ;" varying the interlocutor of Lord Gardenston, Ordinary.

For Spedding, G. Ferguson. *Alt.* A. Elphinston.