

*N.B.*—At the last advising of the cause, there was some controversy as to the question, Whether burgage tenements, and, in particular, houses and gardens within borough, fell within the words and the spirit of the Act *anent tailies*? But this question could not be determined, the heirs of entail not being parties in the cause.

---

1779. November 30. HUMPHRY BLAND GARDENER *against* GEORGE SPALDING and his CURATORS.

ARRESTMENT.

Arrestment not a habile mode of affecting the reversion of an estate sold judicially.

[*Fac. Coll. VIII. 177*; *Dict. 730.*]

BRAXFIELD. In the case of a judicial sale, the creditors must be paid before the purchaser can have right to the lands. The price of the lands is an heritable subject, and the creditors must carry it by adjudication. The heir must carry the reversion by service and infestment; he cannot carry it, like moveables, by confirmation.

KAIMES. The reversion of an estate, sold under the Act 1681, belongs to the heir after the creditors are paid; but the heir must make up titles to it, and so must creditors. There is an inconveniency in obliging the creditors to adjudge; but *incommodum non solvit argumentum*.

MONBODDO. The price of an estate, sold under the Act 1681, does not become a moveable subject.

GARDENSTON. An adjudication might be necessary, were there any competition of creditors; but here there is none. It is the curator of the heir who is pleading, plainly to the prejudice of the heir, and he forces the creditors to tear the estate to pieces by adjudication.

JUSTICE-CLERK. I have some doubt how far the rule of law can apply to this case.

KAIMES. Here there is an apparent heir only. He could not get the subject without a real title; and how can the creditors get it from him by a forthcoming?

COVINGTON. How came the apparent heir to get an aliment *here*, as he has not entered?

BRAXFIELD. That is not the present question; but I see how he could get it. An apparent heir has right, although not entered to the rents of the estate.

On the 30th November 1779, “The Lords found that the reversion could not be attached by arrestment;” adhering, in substance, to Lord Westhall’s interlocutor.

*Act. G. Ferguson. Alt. W. Nairne.*