

1788. *January 16.* GEORGE PICKERING *against* THOMAS SMITH and OTHERS.

BANKRUPT.

An heritable bond, granted in security of sums to be paid on a cash account, found ineffectual, except as to payments made prior to the infertment.

[*Fac. Coll. X. 25 ; Dictionary, 1155.*]

ESK GROVE. Were I to have the power of enacting laws, I should be willing to support this security ; for it is not so dangerous as indefinite securities ; but if I can read, the words of the statute 1696 are general. An obligation to contract a debt is not a debt.

MONBODDO. And had I the making of the law, I should make it just as it is. A conditional debt exists before the date of the infertment, but that is not the case here.

JUSTICE-CLERK. The Act 1696 is an excellent statute, and I shall never try to limit it. The Act strikes against every debt not existing at the date of the infertment ; this is no new law,—it goes upon feudal principles : for how can there, upon feudal principles, be an infertment in a subject which did not exist : that would be a shadow without a substance. The notion of an infertment on a cash-account is not agreeable to feudal principles. For example, infertment is granted on a cash-account, and an advance is made of ten thousand pounds ; next day five thousand pounds are paid, and then the security remaining is for five thousand pounds ; then again five thousand pounds are advanced, and then the security remains for ten thousand pounds ; eight thousand pounds are paid, and there remains a security for two thousand pounds : infertments must not dance backward and forward this way.

SWINTON. When an Act of Parliament assigns a reason for any enactment, and a case occurs which does not fall under that reason, judges may use a latitude of interpretation ; but it is too late to do so in this case, after the decisions which have been pronounced.

PRESIDENT. An interpreter of the laws must not take such liberties. The Act 1696 does not deviate from the principles of the feudal law. In the case of Dempster, that very eminent lawyer, Lord Elchies, differed from the opinion of the Court, but his doubt does not occur in this case ; there is no specific obligation *here* as there was in that case, which made Lord Elchies hold that there was an antecedent debt. Here there was no obligation on the London merchants to advance the whole money.

HAILES. In the case, 12th December 1780, *Bank of Scotland against Bank of England*, President Dundas, now no more, said “ there never was a new loan ; had there been such, the infertment would not have reached it.”

On the 16th January 1788, “ The Lords sustained the reasons of reduction.”

*Act. H. Erskine. Alt. R. Blair.*

*Reporter, Stonefield.*