

thing was paid in consequence of the right from the Crown. All that our law requires, is a habile title and possession *qua* proprietor.

KAIMES. It is a rule in our law, that no man can invert the title of his possession.

ALEMORE. I have heard so good opinions on both sides, that I am doubtful how to form mine. The person put into possession had a precarious right, for which nothing was to be paid: how does it appear that the Rollos did not continue to possess on the Crown's right? *Here*, in effect, there were two precarious rights; how can the Rollos plead the one against the other? I admit that they might have pleaded on either title against a third party. According to Middleton's argument, a person getting right from a liferenter may immediately take a charter from John a Nokes, and infest himself on it: and if he live for 40 years, he will have the property secured to him.

JUSTICE-CLERK. The right on the Clan Act is out of the question. The only thing material is the plea of positive prescription. Grahame's charter was a charter of the lands, burdened with the *dominium utile*. Rollo forfeited. The king was declared, by statute, to be vested in the lands: this is as good as if a title had been made up to the lands. They were surveyed,—a factor was appointed,—possession taken: the Crown allowed the rents to be possessed by the heir of the forfeited person: Will the heir then plead on the right of superiority as being a right of property? Our difference in opinion arises from our not attending to this,—that Graham's right and the Crown's right are perfectly compatible. I cannot desire Lord Dunmore to pay a full price for what I would not pay a full price.

On the 20th July 1774, "The Lords found the progress not sufficient;" altering Lord Monboddo's interlocutor: but, on a new production, 22d December 1774, "Found progress sufficient."

*Act.* R. M'Queen. *Alt.* A. Lockhart.

*Diss.* Alva, Coalston, Monboddo. *Non liquet*, Pitfour.

1774. July 23. JAMES HUTTON and OTHERS *against* JAMES KNOX and OTHERS.

#### BURGH ROYAL.

Non-residents, Minors, Members of the Guildry, Town-officers, and Pensioners of a Burgh, cannot vote in the election of a Deacon.

In a process of reduction and declarator, for setting aside the election of the deacons and treasurers of certain of the incorporations of the town of Brechin, the votes of several of the electors were objected to. The objections were reduced to the following heads:—*1st*, Non-residence; *2dly*, Such as were members of the guildry; *3dly*, Such as were minors; *4thly*, Town servants and pensioners.

The following opinions were delivered:—

HAILES. It is inconsistent with the institution of the borough that non-residents should vote. A burgh is held of the Crown by the tenure of watching and warding, which implies residence.

PRESIDENT. So it was found in the case of *Mary's Chapel* against *Miller*; but I consider that as a hard decision. When a man goes to a distance from the burgh, something may be said; but it is hard to impose this incapacity on a man for residing on the opposite side of a gutter or of a street. The objection was repelled many years ago, in a case from *Aberbrothock*.

MONBODDO. It is clear that a man cannot be both of the guildry and vote among the trades. This would sap the foundation of the constitutions of burghs.

AUCHINLECK. I do not like to establish an aristocracy in burghs.

PRESIDENT. It is a point established, that minors cannot vote.

HAILES. Town-officers cannot vote: and so it has been thought in the town of Brechin, by the farce of displacing them before an election. All the difficulty arises from the judgment of the House of Lords concerning the vote of the *Bellman of Haddington*.

PRESIDENT. I will not pay such deference to the judgment of the House of Lords in a single case, as to overturn what I take to be consuetudinary law. This is provided by the Act of Convention at the Revolution, and I revere that authority.

PRESIDENT. As to pensioners, I think that the town's pensioners cannot vote. The reason of their incapacity is, their dependant state; but I do not see why the pensioner of another parish may not vote.

On the 23d July 1774, "The Lords found that non-residents, minors, members of the guildry, town-officers, and pensioners of the burgh, cannot be received to vote in the election of deacons."

*Act. G. B. Hepburn, A. Lockhart. Alt. D. Rae, A. Wight. Ordinary action, Inner-house.*

1774. June 16. WILLIAM GOLDIE *against* WILLIAM GRAY.

#### SOCIETY—COMPENSATION.

Whether retention is competent, at common law, to one partner of another partner's share of the companies' stock, in payment of debts due to him by that partner, in a competition with his creditors?

Whether, in such competition, the partner-creditor can claim a preference on that share, in virtue of an assignment in the contract of copartnership.

[*Faculty Collection, VI. 297; Dictionary, 14,598.*]

MONBODDO. A company, and the particular members of a company, are perfectly distinct: the debt due by one member cannot be compensated by a