according to the value of his estate. This is laid down in the Act of Convention in Charles II.'s reign. If there are two estates paying L.20 each for a tack of nineteen years, and the one pays a grassum of L.100, and the other none, can we say that the estates are equal? I think not: the one is an estate of L.20, the other L.30. If the grassum is inconsiderable, the rule applies, *De minimis non curat prætor.* It is true that, in sales, grassums are not brought in, nor flying customs, as they are called; the reason is, that that estimation is no more than a rough *vidimus.* As also, in sales, the rate at which the lands may sell is generally undervalued.

ELLIOCK. The grassum is no rent: it is a consideration for receiving one tenant rather than another. Perhaps, at the end of the 19 years, the grassum may not be renewed: if so, the cess will be paid for a subject that does not exist.

ALVA. The cess-roll is a standard thing, and must not be varied by circumstances: we are to judge like the English gentleman who said, whenever he gave away a shilling, he considered that he gave away the interest of a shilling for ever.

KAIMES. A grassum may be said to enter into the value of the subject; but there is a necessity that some general rule should be followed.

On the 10th August 1774, "The Lords repelled the objection that the grassum was not valued."

Act. D. Rae. *Alt.* H. Dundas.

Diss. Monboddo, Auchinleck, Coalston, Hailes.

1774. *November* 15. JAMES BUCHANAN, Dean of Guild of Glasgow, *against* PATRICK BELL.

JURISDICTION—PUBLIC POLICE.

Whether the Dean of Guild has power to make general regulations for removing what, though not strictly a nuisance, may be deemed a deformity, and prove incommodious to the inhabitants and the public in general.

[*Faculty Collection, VI. p.* 360; *Dictionary,* 13,178.]

AUCHINLECK. The plea of prescription now appears to have no foundation in fact: but, at any rate, prescription can have no place here. If the *water-barge* is a nuisance, no length of time can sanctify it. The good people in Edinburgh were wont, for ages, to throw all their filth out of the windows; but that gave them no right to persist in such an abominable custom.

KENNET. Said that, while on the circuit, he had inspected the *water-barge;* that it was not necessary to the owner, and was a great deformity.

GARDENSTON. The Dean of Guild has a discretionary power to remove deformities.

COALSTON. By the law of this country, the Dean of Guild cannot take away the right of any person, but he has a discretionary power of regulating

the exercise of that right as to the manner of erecting buildings. A man may desire to build his house with the gavel to the street, but the Dean of Guild may prevent him if he thinks fit. He has also a power to remove nuisances. This *water-barge* is both a deformity and a nuisance: to remove it, is just the same thing as to remove sign-posts: they were a deformity, and, as being dangerous to passengers, a nuisance.

ALVA. The discretionary power of the Dean of Guild has always been a favourite maxim of mine.

PRESIDENT. I would not adhere to the interlocutor, even supposing prescription. Whenever there is a visible *opus manufactum*, no toleration by the carelessness of magistrates can support it. The case of the *Luckenbooths* is not to the purpose: there, there is a property in the ground, and houses erected on that property. If the *water-barge* had not affected the public street, I should have doubted.

On the 15th November 1774, "The Lords found the letters orderly proceeded;" altering Lord Elliock's interlocutor.

Act. W. Craig. *Alt.* R. Blair.

1774. *November* 16. HUGH GORDON *against* JAMES, LORD FORBES, &c.

REAL AND PERSONAL—TACK.

Whether a tack of services prestable by tenants, when clothed with possession, is an effectual right against singular successors in the lands.

[*Fac. Col. VI.* 362; *Dictionary*, p. 15,221.]

AUCHINLECK. A man is proprietor of an estate and of a mill: he sets a tack and thirles all the tenants: Could he afterwards sell the lands to one man, and the mill to another, so as to defeat the servitude of thirlage, notwithstanding the written tack? Or, Will not the singular successor in the lands be still thirled?

MONBODDO. This is a kind of servitude resembling that mentioned by Lord Auchinleck. It is indeed an improper servitude, as consisting *in agendo*: the purchaser would be liable in the one case, why not in the other? The purchaser acquired with the burden.

PRESIDENT. Is the purchaser bound to submit to such a servitude for ever? I distinguish between a real servitude and a personal servitude. Here is a constitution of a servitude by a mere personal tack for a certain endurance; How can this last after the endurance limited, or how can the personal paction be renewed?

GARDENSTON. The purchaser cannot be bound to make good services of this nature: before the excellent statute for the security of tenants, purchasers were not bound by tacks. Try this case by the statute: The estate is sold in lots,—every purchaser is bound to make good the tacks on the lot purchased, but he is not bound as to a lot he has not purchased. Here, Grant of Roth-