I may poind in order to complete my diligence. My difficulty is, that the order granted by the judge is not equivalent to a decreet of forthcoming: if the goods had been sold, no doubt would have remained: but, in this case, they were still the property of the common debtor, and might therefore be affected by the diligence of the creditor.

COALSTON. The legal effects of arrestment two-fold. 1*st*, To preclude the arrestee from disponing. 2*d*, To preclude the common debtor from disponing. But still it is inchoate diligence and no more. Legal proceedings in the forthcoming will not exclude poinding. The only question, Whether is the order of the judge equivalent to a decreet of forthcoming? It is not. Suppose that the debtor had granted a warrant to poind the goods, this would have hindered a poinding to proceed. The warrant of the judge is no more than the warrant of the debtor. My difficulty is as to the decisions quoted. Whether am I to follow my own ideas, or the decisions?

GARDENSTON. For the present judgment of the Ordinary. I cannot make a distinction where there is no real difference. The style of a judgment, when goods are to be sold, must be different from that of a decreet of forthcoming in a sum of money; and the only difference is in style, for the same thing is intended in both cases.

KAIMES. When goods are once *in manibus curiæ*, no poinding can proceed. Why so? because such goods are under the power of the Court. And how can a poinding deprive a Court of that power?

Repel the defence on the poinding, and remit to the Ordinary.

Act. Swinton, *tertius*. *Alt.* A. Lockhart.

Diss. Monboddo.

1767. *July* 16. JOHN TAYLOR and OTHERS, *against* The CONVENERY of the TRADES of ABERDEEN.

COMMUNITY.

A clerk to an incorporation appointed for life, is entitled to object to an assistant being joined with him, though he thereby suffers no diminution of salary.

[*Faculty Collection, IV. p. 293. Dictionary* 13,128.]

COALSTON. If there had been a vacancy, the corporations might have named an assistant and successor; but they could not add an assistant during the life of Taylor, who had a liferent office. I do not think that, in strict law, a successor can be named, while the office is full; but it is not time to try that question, as the nomination of a successor cannot take place till the demise of Taylor.

HAILES. I do not approve of survivancies. The granting them is making a contract with posterity, to which posterity does not consent. We wish to have our own hands free; why should we tie up the hands of those who are to come

after us? Survivances are sometimes authorised by inveterate usage; but here I do not see any such usage. The first example is that of *Farquharson* in 1724. He was named conjunct clerk as well as successor; and he paid a sum of money to the society for this favour: Possibly the taking the money might have bound the corporations. The only other example is that of young *Taylor* in 1756; but, as he died leaving his father the present clerk, that example only shows what powers the convenery assumed, but not any acquiescence of the corporations in the actual execution of such assumed powers. This question, however, is, as has been observed, premature. As to the power of naming an assistant, the convenery has no such powers; though, I observe, that, in the present case, they went so far as to assume a right of bestowing a share of the perquisites on the assistant. [Who was to have the custody of the books? Was that to be given to the assistant, notwithstanding Taylor's liferent right? If it was not, how could the assistant act?]

GARDENSTON. No injustice is done to Taylor in naming an assistant, who relieves Taylor of part of the trouble, without drawing any part of the profits. As to survivances, I think them incongruous and inexpedient, unless established by immemorial practice.

ALEMORE. I shall reserve my opinion as to survivances, until that question comes properly before us: Meanwhile, I think that the convenery had no power to conjoin Watson in a liferent office: that was a step to pave the way for a survivancy.

PRESIDENT. I hate survivances, and ever will hate them: but that is not the present question. It was the survivancy that occasioned this favour done to Taylor, in naming an assistant to relieve him: this the convenery could not do. Although Watson renounced all perquisites during Taylor's life, yet, in the nature of the thing, one acting assistant will draw perquisites.

The Lords altered Lord Auchinleck's interlocutor; and found that the convenery had no power to conjoin Watson in a liferent office, without the consent of Taylor; but found it was premature to determine the point as to the survivancy.

Act. W. M'Kenzie. *Alt.* H. Dundas, D. Rae.

1767. *July* 16. JOHN MITCHELL *against* DAVID ADAM.

SASINE.

An Infeftment, in a right of annualrent granted by a person not infeft, proceeding upon the precept contained in a disposition of the property in favour of the granter of the annualrent, was found inept.

[*Faculty Collection, IV., p.* 291. *Dictionary,* 14,335.]

PITFOUR. As Mitchell was infeft on John's precept, I do not see that the assignation was inept. A procuratory and precept may be assigned *qualificate*. An annualrent may be established in a burgage holding, although there cannot be subaltern infeftments in such holding. The objection to the want of registration is only competent to one having a prior right. A hundred heritable bonds, and as many adjudications, will be overturned if this interlocutor stand.