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.

An adjudication is no more than a right in security for payment. If my debtor is not infeft, I must take his author's procuratory and infeft myself on it, and upon that obtain charter of resignation from the superior. The next creditor will do the same as to the reversion, so that the precept will never be exhausted.

ELLIOCK. A sasine is a good right, *quoad* the granter; but, if not registered, is not good *quoad* extraneous persons.

KENNET. The son might have conveyed either the whole or a part of the precept; but this has not been done. An assignation of a precept will not do for establishing an infeftment of annualrent.

GARDENSTON. If we hold that it is not in the power of a man, having a personal right, to grant a disposition which may be made real, the consequences would reach far.

COALSTON. One having a personal right may denude himself totally or *qualificate*: If so, why may he not grant a right of annualrent. If Robert Watt had granted a disposition in security, and infeftment had been taken on the precept, it would have been good; why might he not also have granted an infeftment of annualrent?

BARJARG. A disposition in security is different from a disposition of an annualrent.

MONBODDO. A right to a precept of sasine is a personal right: it may be divided like a real right; it is assigned in right of the person having the real right. The example of an adjudication is in point: it is a redeemable right in security, by the operation of the law, as much as an infeftment of annualrent is a redeemable right by the operation of the party.

PRESIDENT,—observed that the fact has been imperfectly stated; for that the disposition and infeftment bore earth and stone, as being an absolute disposition of lands.

The Lords altered and preferred Mitchell; but remitted to the Lord Ordinary, (Kennet,) to hear parties upon the point of registration.

Act. J. Douglas. *Alt.* J. Grant.

1767. *July* 17. ALEXANDER MARTIN *against* ROBERT WATT.

JURISDICTION.

The Court of Session found not competent to try a question between two custom-house officers, concerning the division of a seizure.

[*Supplement*, 5—495.]

BARJARG. The question might have been determined in Exchequer; but I think it may also be determined in this Court.

GARDENSTON. We have enough to do of our own, without interfering with the business of another court. It is *pars judicis* to stop where an action is incompetent, although the parties be willing to proceed. This I learnt from Lord Arniston when I first came to the bar.

JUSTICE-CLERK. There is a foundation in common law for the action: the one party has chosen a jurisdiction, that of the Sheriff, and the other party has acquiesced, and has brought the cause to this Court.