creet and a *contract*, which is *juris gentium*. The law of Holland says that you are relieved in so far as to allow a challenge, upon finding caution.

On the 8th February 1775, " The Lords found, That the decreet-arbitral is challengeable, but must, in the meantime, be carried into execution, Dr Johnstone finding caution."

Act. J. Boswell. *Alt.* A. Murray.

Reporter, Gardenston.

1776. *December* 18.—In this case the Lord Gardenston, Ordinary, " Having considered the whole proceedings in this cause, particularly the remit from the Lords, the additional case, and opinion thereon of Dutch counsel, assoilyied the defender."

On the 10th December 1776, " The Lords assoilyied" in general, waiving the general point, whether this cause ought to be tried by the law of Holland. As to that, Monboddo and President expressed their doubts. I have made this memorandum for preventing any mistake.

Act. A. Murray. *Alt.* J. Boswell.

1776. *December* 13. JAMES SCOT of SCALLOWAY *against* JOHN BRUCE STEWART.

SASINE.

A Sasine taken, not on the Lands, in consequence of a Dispensation from a Subject-superior, found null.

[*Fac. Coll. VII.* 355; *Dict. App. I. Sasine, No. II.*]

THIS case was reported by Mr Robert M'Queen of Braxfield, Lord Probationer, who thus delivered his opinion as to the objection to the title of the pursuer:—An adjudication, on which charter and sasine have followed, is certainly subject to negative prescription. When a court of law adjudges an estate, there is still a right of property remaining in the debtor. Hence, in a ranking and sale, if there is any reversion, the heir of the debtor must make up titles to it by a special service. But here prescription is not competent to be pleaded by the respondent. It is *jus tertii* for a competitor to plead it; for he is not in the right of the person against whom the adjudication was led. The first question, as to the validity of the exclusive title, is of great importance. I am clear that the exception in the statute 1617 is no bar: the statute relates to negative prescription only. As long as a person possesses on a right bearing a reversion *in grœmio*, his possession is that of the reverser; and the reverser's right must be saved from a negative prescription. But it is not possible to suppose that the statute meant to hinder a man from acquiring a right which he had not before. A right *a non domino*, after the years of prescription, is as valid as a right *a vero domino*. There is a legal presumption introduced that all rights were conveyed, as in the case of *Elliot of Arkleton*

against *Maxwell.* I am as clear as I was ever in my life, that it was a wrong decision. Besides, it applies not to this case. It would wound the statute 1617, if a registered reversion was to be a perpetual bar against prescription. As to the second point, I am afraid of any innovation in the feudal law of Scotland. This case is different from the cases decided in the House of Lords, from Forfar and Linlithgowshire; for here the question is, How far can one subject grant dispensation to another, as to taking infeftment in places discontiguous? Intrinsic nullities in titles do never prescribe. The question is, Whether ought this to be accounted such? I incline to think that it is not an intrinsic nullity, and that possession for forty years is sufficient to support this sasine. A tenement, once united, does, in the opinion of the House of Lords, remain united, as to the purpose of sasine, on any part of the ground. *Quær.* After forty years' possession, ought we not to presume that there had been such a union and dispensation in this case?

Monboddo. It was not necessary to make a statute that a right of reversion in a man's own right should be good against him; for no one can object to the right on which he founds. If this right had been engrossed in the titles of prescription, it would have been good. It is true that the defender here has acquired a right from a person who had none; but that is the case in matters of prescription in general. A man, in the case of teinds, may, by means of an erroneous title and a long life, acquire a right to himself. As to the case of *Arkleton,* it does not apply, and, if it did, I should think it a wrong decision. Lord Dirleton says, "Why should not a right of reversion on record prescribe as well as a bond on record?" I think that there is much reason for the query.

Hailes. I am of opinion, with the Lord Probationer, as to the *first* general point. As to the *second,* I have more difficulty. Objections to sasines are not fashionable; and, *post tantum temporis,* they are not favourable. I know in what manner some objections to sasines have been treated elsewhere; yet I know not how they can be disregarded, unless we abolish the formalities of our investitures altogether. In this case there is something more than in the cases which have been formerly judged; for here a subject assumed a royal power indeed, and authorised sasine to be taken, not on any part of discontiguous lands disponed, but on a separate parcel, not disponed. It is said there has been an erroneous usage, and *this* might go a great way as to times past; but this alleged usage amounts to no more than this, that some practitioners in Shetland neglected the law, while others observed it: Shall the *observance* go for nothing and the *neglect* be the rule?

Elliock. These lands were formerly udal lands; so that it is impossible that there could have ever been such a grant from the Crown as the Lord Probationer would presume. If parties choose to take infeftments in an unusual way, they must look to the consequences.

President. I am clearly of opinion, with the Lord Probationer, as to the first objection. The positive prescription is *adjectio dominii continuatione possessionis per tempus lege definitum.* There is no occasion to attack the decision in the case of *Arkleton*; but I cannot reconcile it with the principle which I lay down as to the nature of positive prescription. As to the second point, it is dangerous to encroach upon the principles of the feudal law. I

thought the decisions of the House of Lords in the cases from Forfar, &c. wrong decisions. They proceeded on a wrong ground, that the register of sasines was a sufficient security to the lieges, and that feudal solemnities were no longer of consequence. *Here* is a still stronger case than that decided in the House of Lords; for there is an unity created by a subject, and a null sasine is the consequence. A nullity in a sasine can never work off. I cannot presume an union by the Crown, in order to support a sasine which is null in law. As to practice, there is no universal practice which might be of moment *quoad præterita*: there is only alleged a practice, partially erroneous, in one county in Scotland. Shall we establish one rule in Shetland and another in the rest of Scotland?

On the 13th December 1776, "The Lords repelled the first objection, [though that was not expressed in the interlocutor;] and, on consideration of the second objection, found that the defender has not yet produced sufficient to exclude; reserving to the defender to support the sasine before the Lord Ordinary:" altering Lord Kennet's interlocutor, which had found that the defender had produced sufficient to exclude.

Act. B. W. M'Leod, D. Rae. *Alt.* Ilay Campbell.

Reporter, Braxfield.

1776. *December* 13. William Fotheringham and Others *against* Andrew Langlands, &c.

BURGH-ROYAL.

Power of a Burgh to alter its usages.

[*Faculty Collection, VII.* 324; *Dict., App. I.—Burgh-Royal, No. II.*]

Hailes. This declarator is calculated to overturn the whole law of corporations. It is said that there is no seal of cause; and, therefore, practice must be the rule. Although there were a seal of cause, by the magistrates allowing persons not of a trade to be members of that trade, it would signify nothing. No magistrates can grant to tailors or fishmongers the privilege of hammermen. This would take away the whole method of qualifying persons in any particular profession; and all tailors might become hammermen, and all hammermen tailors. As a seal of cause could not do this, so neither can practice. Practice may have force *in possessorio;* but whenever a declarator is brought, the right must be the rule. The other conclusions are no less anomalous. The son of a hammerman, if he follows his father's profession, may be admitted, on paying smaller dues than a stranger; but he cannot be admitted as a hammerman without learning the craft of a hammerman. *This* would be to convert our corporations, or companies, into Indian castes; and so also, as to the privilege claimed from marrying the daughter of a hammerman, it resolves into this—a young