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

man, instead of producing a piece of work as his *essay-piece*, must be allowed to produce a hammerman's daughter, and to say, *that* is my *essay-piece*.

AUCHINLECK. The use of corporations, and for which the law allows them, is, that the lieges may be insured of having persons capable to work in the several trades necessary for society. Hence, when I hear of a corporation of tailors, I send for one of them, and desire him to make me a suit of clothes; but, on conversing with him, I learn that he cannot draw a thread, but is a fishmonger. [When I want to have my horse shod, must I go to a shoemaker; myself shod, to a hammerman?]

BRAXFIELD. The regulations sought to be declared are absurd and ridiculous, and inconsistent with the law of the land. It would, however, have been better had a reduction been brought of the strange and unconstitutional act of the corporation of hammermen in 1770.

PRESIDENT. I would have had the same difficulty, were it not that the pursuers have brought a declarator.

On the 13th December 1776, "The Lords sustained the defences;" adhering to Lord Kennet's interlocutor.

Act. D. Rae. *Alt.* A. Wight.

1776. *December* 13. AGNES PEADIE *against* ARCHIBALD HAMILTON.

PROCESS—ADJUDICATION.

In a process of adjudication, the defender is entitled to take a day to produce a progress, whatever may be the consequence, to the pursuer, of the delay.

[*Faculty Collection, VII.* 329; *Dictionary, App. I.; Pro. No. II.; Sup. V.* 457.]

PRESIDENT. Your Lordships will consider this cause as independent of the Christmas vacation altogether; and you will determine whether, if the demand now made, were made during the sitting of the Court, you would grant it. I never understood that a first adjudication could be on one diet. *Ex æquitate* there has been an indulgence in order to establish a *pari passu* preference. But the Court has never relaxed from its forms in order to establish a preference; and yet *that* is here sought.

BRAXFIELD. I know no case where a *first* adjudication can be allowed to proceed on one diet. A *second* may, because a second adjudication admits of no defence. Defences only *contra executionem* are reserved in a second adjudication. It is common to make two diets of compearance; but, in the case of *Hamilton of Bourtreehill*, the Lords allowed the summons to be enrolled in one, for it was thought that a summons was not the worse for having an unnecessary diet of compearance. In this case, how can we dispense with the Act 1672, which allows a day to produce a progress? Besides, the intention here is not to obtain a *pari passu* preference; but, on the contrary, there is a *jus quæsitum* to the other creditors, through the negligence of this petitioner; and *that* we cannot frustrate.