stables of the most opulent man and the byre of the meanest? There must be one general rule, and if the legislature sees that rule to be inconvenient, it will give us a new law; but in the meantime we must judge according to the old one. The difficulty of kilns and barns scattered over the ground does not affect me, for such things may be considered as adjuncts or pertinents of the fields, and will be divided along with the fields, just as shades for cattle and other accommodations of a farm; but they are very different from office-houses connected with the mansion-house and possessed along with it.

KAIMES. This matter goes deep into the principles of property. Here is a division of run-rig: How can we divide houses?

GARDENSTON. [At the first hearing, not present at the second.] I have great difficulty of going the length of the exchange of offices upon the authority of the Act of Parliament. There are bounds to be set to the interpretation of the most beneficial statutes. Offices are part of the dwelling-house: we may as well take away what parts of a house we may think superfluous. The law excepts policy: surely offices are as much *policy* as gardens and trees.

MONBODDO. A stable is a very special part of a mansion-house. I would rather give up the best room in my house than give up my stable.

PRESIDENT. The question is not what is equitable and convenient, but whether the Act of Parliament authorises us to give to one man part of the offices of another? Kilns and shades may be considered as adjuncts. There is nothing in the Act of Parliament which allows money to be given in compensation, and yet the present action is founded on that principle, that money may be given in compensation. Such compensation may be necessary, and the law allows it, where the question is as to straighting of marches, and a division cannot be made without an allotment to one or other of the parties.

On the 14th July 1777, "The Lords found that the offices are no proper subject of division, in terms of the Act 1695, and remitted to the Ordinary to proceed accordingly."

Act. Ilay Campbell. *Alt.* R. Cullen.
Reporter, Alva.
Diss. Justice-Clerk, Alva.

1777. *January* 16. LIEUTENANT ARCHIBALD CAMPBELL *against* DUNCAN MACALISTER.

IRRITANCY.

Whether a suspension of a decree of removing be competent after symbolical ejection has taken place?

[*Faculty Collection, VII. p.* 350; *Dict., App.* —; *Irritancy, No.* 1.]

BRAXFIELD. If the decreet of removing had been carried into execution, we

could not undo what has been done; but when the execution of the decreet is only *dicis causa*, the case is different.

PRESIDENT. I would hold by the forms of the law; but when I see the foundation of the diligence to be rotten, I would examine every thing. If the entry is at two terms, the removing also must be at two terms.

ALVA. The moderation used in removings ought not to be considered as less effectual on that account. I should be sorry to see it go out as law in the Highlands of Scotland, that a man cannot be effectually ejected unless his goods are all thrown to the door, and he and his family turned out at the mercy of the seasons. The tenant here is not without a remedy, that of reduction.

MONBODDO. I do not think that the ejection can be challenged as not sufficient. Symbolical ejection is that which is universally employed. Here the tenant is *de facto* removed; but there are other objections to the proceedings.

On the 16th January 1777, "the Lords repelled the objections to the competency, and upon the merits sustained the defences against removing." [Unanimously.]

Act. Ilay Campbell. *Alt.* G. Wallace.

Reporter, Alva.

Diss. As to competency, Kaimes, Alva, Hailes.

1777. *January* 17. SIMON FRASER *against* JOHN WELSH.

ADJUDICATION.

[*Supplement, V.* 458.]

BRAXFIELD. There is nothing in the objection as to the decreet of constitution. The debtor was called and did not appear: hence the presumption is that he acknowledged the debt. Still the creditors might be heard to object; but the decreet is *ex facie* good. There is no occasion for producing the decreet of constitution in the adjudication.

KENNET. I should incline to think that the creditors are in a more favourable case than the common debtor.

KAIMES. If I take a decreet, just libelling L.50 resting owing, without saying why, the decreet is good, because the libel is understood to refer to the oath or acknowledgment of the debtor. Will it make any difference if the libel should add, that such a sum is owing by a bond? I think not; for still the acknowledgment of the debt is presumed.

PRESIDENT. Mr M'Intosh is cited, and he is expressly held as confessed, on a narrative of all the debts.

MONBODDO. If no ground of debt had been libelled, there would have been a difficulty; but there is none in the present case.