kerston fixed the law of Scotland on the point in question; and there has been no decision contrary to it for upwards of forty years. All the right that the substitute has is a *personal*, not a *real* right, and that *personal* right cannot carry off the estate.

KENNET. My former opinion was that the minority of the pursuer was to be deducted; but now I think it ought not. The only certain rule that we can go by, is, that the only minority to be regarded is the minority of the person who can vindicate the estate.

SWINTON. There must be a *jus succedendi* before a *non valentia agere* can be an excuse for the silence of minors. Had the succession opened by a contravention, then the minority of the heir-male might have been pleaded; but here is no contravention, for the entail is not guarded with clauses irritant and resolutive.

PRESIDENT. I heard the case of Makerston judged, and I revere it. President Forbes and Lord Arniston supported the decision: the principles in the case of Makerston were adopted in the case of Kinnadie, by President Craigie, and Lord Justice-Clerk Tinwald, who had been lawyers on the losing side in the case of Makerston. Both Lord Hardwick and Lord Mansfield approved of the judgment. We must not wreathe the yoke of entails about our necks beyond practice, and without necessity: it must be the minority of a man having right that can be pleaded. A substitute has no such right; for he cannot, as the Act 1617 says, *compete* in prescription: there must be a right against a right.

On the 21st December 1784, "The Lords found that the years of the minority of the pursuer, before the death of Mr Alexander Gordon, are not to be deducted from the term of prescription pleaded by the defenders;" altering, on a hearing in presence, their own interlocutor.

Act. R. Blair, R. Dundas. *Alt.* W. Honeyman, Ilay Campbell, &c.

Diss. Monboddo, Henderland, Rockville.

Non liquet, Ankerville.

I never understood this case till I heard Lord Justice-Clerk give his opinion.

1781. *January* 19. MARY MORRIS *against* ROBERT WRIGHT.

FOREIGN.

Succession of moveables governed by the law of the place in which they were situated at the death of the proprietor.

[*Faculty Collection, IX.* 304; *Dict.* 4616.]

PRESIDENT. In the case, *Duncan at Rotterdam*, 1738, the great lawyers ex-

ploded the doctrine that *mobilia non habent sequelam.* So in the cases of *Lord Daer*, and the *Heirs of Lord Banff*, and afterwards in the cases of *Davidson* against *Elcherston, and Henderson.* Let the judgments on this point be altered elsewhere; I cannot help it. But God forbid that the Court should vary from what is fixed in our law. The case of *Brown of Braid* was a single judgment, on a single overly report to a thin bench, and there was no reclaiming petition. The lawyers of that time were satisfied of the decision being erroneous.

On the 19th January 1785, "The Lords sustained the defences, reserving claims for terce."

Act. Ilay Campbell. *Alt.* A. Wight.

Reporter, Hailes.

1785. *February* 1. ANDREW BLANE *against* DAVID MORRISON and OTHERS.

HYPOTHEC.

A landlord having granted to a tenant power to subset, found to have no hypothec over the effects of the subtenants; but there were particular circumstances in the case.

[*Faculty Collection, IX.* 321; *Dictionary,* 6232.]

BRAXFIELD. Here there are difficulties on each side. If a subtenant be in possession, the master's hypothec must be over his goods or nowhere. If payment by the subtenant to the principal tenant were to relieve the subtenant, the master would be obliged to sequestrate *currente termino.* On the other hand, when the principal tenant subsets his lands, from whence is he to pay his rent, if he may not be allowed to levy rent from his subtenant? Different cases are to be distinguished: When a landlord gives no power to introduce subtenants, he is not excluded from attaching the goods of the subtenants, being upon the ground: no rent can be paid to the principal tenant while the hypothec remains; the master may lay hold of the goods of any subtenant for payment of his rent. But when the lands are subset, with consent of the landlord, the case is different. Consent by the master is in three ways: 1*st*, By his signing the subtack; 2*d*, By receiving rent; 3*d*, Which, is the most common case, by allowing the tenant to subset. Does not consent imply that the subtenant is permitted to pay to the principal tenant, and to obtain discharges for it. Still a principal tacksman may be restrained in the mode of subsetting: for instance, should he subset for a forehand rent, or take a grassum, and after it a smaller rent than what he himself pays to the landlord. While the rent is *in medio*, and the subtack fair, the master has not only a hypothec, but a preferable claim to