for months or years. In practice, surgeons are only preferred for sixty days preceding the death of the patient.

BRAXFIELD. In practice the preference is so limited. If a person should continue ill for three or four months, and then die, I should have difficulty; but here the account was closed in England, and another surgeon employed. It was natural for the first surgeon to have given in his account at that time. Besides, there is no evidence that the deceased died of madness, which was the distemper under which he laboured while Mr Maxwell attended him.

PRESIDENT. That cannot be the deathbed disease which continues very long. It is an arbitrary question this. I have no great difficulty in assuming *sixty days*, not on account of any analogy with the Act of Parliament, but merely as a *limited* time. Here the time was longer, and the account was shut. There must, in order to a preference, be an account-current at the time of the death. Besides, this account must be judged of by the law of England. Fifty guineas are charged for attendance. This at no rate can be preferable, for it is not on account of medicaments.

MONBODDO. We are not to look in the civil law for decisions of this question. Diseases did not continue for months among the ancients, as they do with us. [He was told afterwards that his observations might imply that the physicians of antiquity gave dispatch to their patients.] Physicians are paid on the spot, like lawyers, but surgeons and apothecaries are not. If a man is dying for fifteen months, I see no reason why that illness should not be considered as his last illness; and therefore I am for the preference.

On the 12th February 1784, "The Lords found Mr Maxwell not entitled to any preference;" altering their former interlocutor.

For Lawson,—R. Corbet. *Alt.* R. R. Dalyell.

Diss. Monboddo, Ankerville.

1784. *February* 19. ROBERT RICHARDSON *against* ARCHIBALD SHIELLS.

SERVICE AND CONFIRMATION.

The Property established by the possession of a general Disponee unconfirmed, is limited to the Subject possessed.

[*Faculty Collection, IX.* 229; *Dictionary*, 14,377.]

BRAXFIELD. The subject is plainly *moveable*. A right of retention does not make *heritable*. As to the titles by confirmation to Alexander Orr, the father, and

the right of the factor on the subjects of Alexander Orr, the son; the son's right is a general disposition. A debtor, in such case, may safely make payment, but he cannot be compelled by a general disponee to make payment. The Act 1690 shows the difference of a *jus ad rem* and a *jus in re.* It was not the purpose of the Act 1772 to carry off the estates of bankrupt defuncts; for the Act of sederunt 1662 allows creditors to claim, and they will come in *pari passu.* The Act 1712 did not give more to the factor than what the bankrupt had himself. The act of sequestration will prevent the creditors of Alexander Orr from taking advantage of one another.

JUSTICE-CLERK. The subject is moveable. The general disposition will not vest. My difficulty is as to the sequestration, which goes to the whole subjects that belonged to Alexander Orr, the father. Shiells was a party in the sequestration.

PRESIDENT. That is a mistake. Shiells was no party in the sequestration. It was obtained on the suit of Alexander Orr, the debtor.

On the 19th February 1784, "The Lords preferred Archibald Shiells, in virtue of his confirmation;" adhering to the interlocutor of Lord Kennet. And, 10th March, 1784, "adhered."

Act. Ilay Campbell. *Alt.* W. Baillie.

1784. *June* 15. CHARLES, EARL of PETERBOROUGH, *against* Mrs MARY GARIOCH.

PLANTING AND INCLOSING.

The Act 1661 not to be extended to the case of a conterminous Tenement, where the charges of inclosing would not be compensated by the resulting Improvement.

[*Faculty Collection, IX.* 242; *Dictionary,* 10,497.]

HAILES. The opinion of the visitors must be held just, for it was given at the desire of the parties, and nothing is offered to disprove it. They agree that, on some part of the march, there *must be earthen fences.* And one of them says, that, for the reparation of such fences, there will be required *annually at least one-half of the prime cost.* Now, it is speaking within bounds to say, that this reparation is equal to a complete fencing every three years. The statute certainly meant that there should be a permanent fence, and it never could have meant that one heritor should be burdened with a *new march-dike* every *three years.* If so, this case falls not within the statute, interpret it as liberally as you will. In the case of *Riddel* against the *Marquis of Tweeddale,* there was no doubt as to the practicability of making permanent fences: so that case does not go to this. And, in the case of *Riddel,* the most sanguine improvers on the Bench admitted that the law did not reach to *flow-*