either for or against the party? At any rate, the civil law does uot apply, for the reason given by Lord Braxfield. It might have been wise in the Roman legislature to say, "As you have the right to bring both actions, you ought first to insist in the *publicum judicium*." The same thing cannot be said in Scotland. As to assythment, *that* is a matter fixed by common law, and cannot apply to this case.

On the 9th December 1785, "The Lords, having heard parties in their own presence, repelled the objection."

For Alicia M'Kenzie,—G. B. Hepburn. *Alt.* R. Blair.

Diss. Monboddo.

N.B. This hearing was brought on in consequence of some doubts started by Lord Eskgrove and enforced by Lord Monboddo. But Lord Eskgrove, as soon as he had studied the point, declared himself satisfied that there was nothing in the objection: so Lord Monboddo was left single.

1785. *December* 23. ARTHUR SINCLAIR *against* BARBARA BAIKIE.

HERITABLE AND MOVEABLE.

The annualrents due on a decreet of adjudication go to the heir, and not to the executor of the adjudger.

[*Faculty Collection, IX.* 377; *Dictionary*, 5545.]

MONBODDO. I never could satisfy myself as to the justice of the decision in the case of the *Creditors of Clapperton*, 1738: [and yet, in the case of *Oughterlony*, 1772, when that decision was objected to at the bar, he defended it well, and said it was not given on subtleties, but on principles.] It was well altered by the House of Peers, in the case of *Oughterlony*. To make our law consistent, we ought to adopt that judgment. [On being informed that the House of Peers had given no such judgment, he acquiesced.]

BRAXFIELD. The only point under the Ordinary's consideration was, whether the annualrents on the adjudication are moveable or heritable? This point was solemnly determined in 1738. It is said to be a *single* decision. True,—because the point was understood to be fixed. But the case has occurred five hundred times. No instance can be given of a nearest in kin taking up annualrents of an adjudication by confirmation. Lands are adjudged to creditors in payment of principal, &c.—all accumulated. The land is the creditor's, though the debtor has a power of redemption. If a creditor should enter into possession and bring an action of maills and duties, the rents in the hands of the tenant would be moveable at the death of the creditor. But if the creditor does not enter into possession, and only rests on his legal right as adjudger, the whole will be heritable, and the annualrent, as well as the prin-

cipal, must be paid as the redemption-money for the land. The heir only can discharge. The case of *Oughterlony*, 1772, does not contradict the decision 1738: it went on a presumed declaration of will.

ESKGROVE. I considered this point as so well established that I did not much inquire into the grounds of it. I was lawyer in the case of *Oughterlony*. In the House of Peers we did not controvert the point of law, except a little for form's sake. The argument proceeded on the specialties of the fact and the declaration of will to create a division between principal and interest.

JUSTICE-CLERK. Had the decision 1772 altered the law, we should have had it mentioned daily at the bar, and it would have had a constant effect in settlements.

On the 23d December 1785, "The Lords repelled the grounds of compensation;" altering the interlocutor of Lord Gardenston.

Act. D. Smyth. *Alt.* W. Tait.

Lord Gardenston absent. [The opinion which he gave in the case of *Oughterlony*, 1772, was directly the reverse of his interlocutor in this case.]

1786. *February* 1. SARAH DALRYMPLE and HUSBAND *against* CHARLES SHAW.

PACTUM ILLICITUM.

It is *Pactum Illicitum* if a person stipulate a benefit to himself, or to another, for obtaining to a third an office from Government.

[*Fac. Coll. IX.* 386; *Dict.* 9531.]

PRESIDENT. In Britain some offices are saleable. Commissions in the army, particularly, are saleable; but *that* is by the will of the sovereign. But there is no example of offices bought without the knowledge of the sovereign, or even of his ministers. Such private bargains cannot be the subject of an action: *here* there is an office of *trust*: it never could have been the purpose of the Crown to allow a traffic to be made of such offices.

ESKGROVE. A man may agree to give a part of the emoluments of his office to whoever he pleases; but there is here an office, not in the gift of the party contracting, or of any great officer, but of the crown. I do not suppose that the crown knows any thing of sales and bargains. Besides, here there is no obligation granted by the officer, and this action is to compel him to ratify an obligation granted by his friends.

SWINTON. The *first* question is, Whether does action lie on what is called a *riding contract?* the *second* to what *extent?* I think that a *riding contract* is not actionable; that it is *contra bonos mores*, and inconsistent with the law of the land. When an office is established, a salary is given by the public; but when