HAILES. It is inconsistent with the institution of the borough that non-residenters should vote. A burgh is held of the Crown by the tenure of watching and warding, which implies residence.

PRESIDENT. So it was found in the case of *Mary's Chapel* against *Miller*; but I consider that as a hard decision. When a man goes to a distance from the burgh, something may be said; but it is hard to impose this incapacity on a man for residing on the opposite side of a gutter or of a street. The objection was repelled many years ago, in a case from Aberbrothock.

MONBODDO. It is clear that a man cannot be both of the guildry and vote among the trades. This would sap the foundation of the constitutions of burghs.

AUCHINLECK. I do not like to establish an aristocracy in burghs.

PRESIDENT. It is a point established, that minors cannot vote.

HAILES. Town-officers cannot vote: and so it has been thought in the town of Brechin, by the farce of displacing them before an election. All the difficulty arises from the judgment of the House of Lords concerning the vote of the *Bellman of Haddington*.

PRESIDENT. I will not pay such deference to the judgment of the House of Lords in a single case, as to overturn what I take to be consuetudinary law. This is provided by the Act of Convention at the Revolution, and I revere that authority.

PRESIDENT. As to pensioners, I think that the town's pensioners cannot vote. The reason of their incapacity is, their dependant state; but I do not see why the pensioner of another parish may not vote.

On the 23d July 1774, "The Lords found that non-residents, minors, members of the guildry, town-officers, and pensioners of the burgh, cannot be received to vote in the election of deacons."

Act. G. B. Hepburn, A. Lockhart. *Alt.* D. Rae, A. Wight. Ordinary action, Inner-house.

1774. *June* 16. WILLIAM GOLDIE *against* WILLIAM GRAY.

SOCIETY—COMPENSATION.

Whether retention is competent, at common law, to one partner of another partner's share of the companies' stock, in payment of debts due to him by that partner, in a competition with his creditors?

Whether, in such competition, the partner-creditor can claim a preference on that share, in virtue of an assignment in the contract of copartnership.

[*Faculty Collection, VI.* 297; *Dictionary,* 14,598.]

MONBODDO. A company, and the particular members of a company, are perfectly distinct: the debt due by one member cannot be compensated by a

debt due to the company. The only difference between a private company and a corporation is, that, in the *first*, all must be called; in the *second*, only the managers.

As to the second point, the whole difficulty is in the manner of intimating the assignation. I am of opinion, that if this assignation had not been in the contract of copartnery, intimation would have been necessary. *Here*, the same deed which constitutes the debt, makes the assignation.

JUSTICE-CLERK. That might be very good as to debts actually existing. It would shake loose the bonds of society, if this sort of hypothec were to be established. This would be anomalous in the law, and exceedingly dangerous.

GARDENSTON. It would be dangerous to grant a preference on such an uncertain and eventual assignation. I doubt how far this could be remedied even by an assignation, which, to be good against a creditor, must be onerous. It must be intimated to the debtor; but *who* is the debtor? It may be the company, it may be the debtor of the company.

COALSTON. Of the opinion given as to both points. As to the *first*, there must be a mutual concourse to establish compensation and retention. As to the *second*, if a special sum had been assigned in security of a special debt, no intimation would have been necessary. The defect is as to the validity of the debt itself: here is an assignation of a *nonens*. In security of a *nonens*, a debt conditional, or of which the term of payment is not come, may be assigned: but that is not the case here.

PITFOUR. Mr M'Queen is pretty tenacious of principles of law. I was therefore surprised at his argument.

KAIMES. A contract of copartnery establishes a *body*, though not a *corporation*; yet the debt may be held by *retention*, though not pleaded against by *compensation*.

On the 16th June 1774, "The Lords preferred Goldie;" adhering to Lord Hailes's interlocutor.

Act. A. Rolland. *Alt.* R. M'Queen.

Diss. Monboddo, Kaimes. Pitfour doubted at last.

1774. *July* 27.—PITFOUR. The answers are as clear a demonstration in law as ever I read.

MONBODDO. I wish to see on what this demonstration is founded. The answers, I admit, do support the principle that no retention can take place here; but, with respect to the particularity in this case, arising from the tenor of the assignation, I think that the plea of retention is well founded. Each of the partners has a *jus quæsitum* clogged with a condition: it will be good against every arrester. It has been observed, that this would be a great incumbrance on the credit of partners: *that* is true; but I cannot therefore vacate a lawful and an *expedient* paction. Before the Act 1696, an heritable security might have been given on a *nonens*.

PITFOUR. If the funds of a trading company could be vested in such a way as to give a hypothec to the partners, there would be an end of commerce altogether.

[He spoke at considerable length, but with so low a voice that it was impossible to collect his argument.]

GARDENSTON. This is a judgment of great moment in point of precedent. No assignation can be effectual where the sum is blank; *that* is truly the case *here*. Were this to be sanctioned, innumerable frauds would arise. What can you intimate to the debtor?—that some time or other you may chance to become a creditor for some extent or other?

KAIMES. An assignation must always be in security of some debt. Can I assign a sum in security for any debt which I may hereafter contract?

ALEMORE. No clause in a copartnery can be good *contra communes juris regulas*. This is an assignation of a possible sum in security of a possible debt.

JUSTICE-CLERK. I am glad to hear that there are so few instances of such a clause. I did not think that there could have been any. If such clauses were held effectual, there would be an end of all commerce. It would at one stroke ruin the credit of the country. No man would contract with the partner of a company.

PRESIDENT. The clause is contrary to all ideas that I ever heard of in mercantile business. I am sorry to see new clauses introduced into copartneries. Under it, it would not be safe to contract with any man who *was* of a company, nor indeed with any man who *might* be of a company. All men in labouring circumstances would go into copartneries to save themselves and cut out their creditors.

On 27th July 1774, "the Lords preferred Goldie;" adhering to their interlocutor of 16th June 1774, and to Lord Hailes's interlocutor.

Act. A. Rolland, Ilay Campbell. *Alt.* R. M'Queen, H. Dundas.

Diss. Monboddo.

The writings of the lawyers on both sides received great and just commendation.

1774. *July* 28. MARGARET THOMSON *against* WILLIAM SIMSON.

PRESCRIPTION—MULTIPLEPOINDING.

A process of multiplepoinding, brought in consequence of an arrestment, preserves the arrestment from prescribing, although the arrester's interest is not produced in the multiplepoinding.

[*Faculty Collection, VI.* 343; *Dictionary,* 11,049.]

MONBODDO. A multiplepoinding has the same effect in moveables that a ranking and sale has in heritable subjects. But as, in the latter case, the creditors must produce their grounds of debt in order to save from prescription, so also, in the former, the raising of a multiplepoinding by the debtor is not equivalent to the creditor producing the ground of debt. The decision 1732 seems an erroneous decision.