the exercise of that right as to the manner of erecting buildings. A man may desire to build his house with the gavel to the street, but the Dean of Guild may prevent him if he thinks fit. He has also a power to remove nuisances. This *water-barge* is both a deformity and a nuisance: to remove it, is just the same thing as to remove sign-posts: they were a deformity, and, as being dangerous to passengers, a nuisance.

ALVA. The discretionary power of the Dean of Guild has always been a favourite maxim of mine.

PRESIDENT. I would not adhere to the interlocutor, even supposing prescription. Whenever there is a visible *opus manufactum*, no toleration by the carelessness of magistrates can support it. The case of the *Luckenbooths* is not to the purpose: there, there is a property in the ground, and houses erected on that property. If the *water-barge* had not affected the public street, I should have doubted.

On the 15th November 1774, "The Lords found the letters orderly proceeded;" altering Lord Elliock's interlocutor.

Act. W. Craig. *Alt.* R. Blair.

1774. *November* 16. HUGH GORDON *against* JAMES, LORD FORBES, &c.

REAL AND PERSONAL—TACK.

Whether a tack of services prestable by tenants, when clothed with possession, is an effectual right against singular successors in the lands.

[*Fac. Col. VI.* 362; *Dictionary*, p. 15,221.]

AUCHINLECK. A man is proprietor of an estate and of a mill: he sets a tack and thirles all the tenants: Could he afterwards sell the lands to one man, and the mill to another, so as to defeat the servitude of thirlage, notwithstanding the written tack? Or, Will not the singular successor in the lands be still thirled?

MONBODDO. This is a kind of servitude resembling that mentioned by Lord Auchinleck. It is indeed an improper servitude, as consisting *in agendo*: the purchaser would be liable in the one case, why not in the other? The purchaser acquired with the burden.

PRESIDENT. Is the purchaser bound to submit to such a servitude for ever? I distinguish between a real servitude and a personal servitude. Here is a constitution of a servitude by a mere personal tack for a certain endurance; How can this last after the endurance limited, or how can the personal paction be renewed?

GARDENSTON. The purchaser cannot be bound to make good services of this nature: before the excellent statute for the security of tenants, purchasers were not bound by tacks. Try this case by the statute: The estate is sold in lots,—every purchaser is bound to make good the tacks on the lot purchased, but he is not bound as to a lot he has not purchased. Here, Grant of Roth-

maise, the purchaser of the mains, is liable, but no other purchaser. A servitude is a perpetual burden. *Here* there is no servitude, but only a service or personal obligation.

COALSTON. This question may be new, but it depends on principles that are not new. A purchaser can only be bound by real burdens, or by tacks which are equivalent to real burdens. A purchaser cannot be free from known ordinary servitudes: he is not bound to perform personal obligations like this.

JUSTICE-CLERK. There are no *termini habiles* for a servitude *here*. A man having a mill with multures may dispose of the mill to one man, and of the lands to another, and the multure will remain a burden; for a servitude of that nature has a *causa perpetua*. Lady Forbes is liable: she may have recourse against Grant of Rothmaise, the purchaser, but this is nothing to the purchaser of the other lots. Where is this claim of the pursuer to end? If it is good now, it must be good for ever.

On the 16th November 1774, "The Lords sustained the defence."

Act. R. Blair. *Alt.* P. Murray. *Reporter*, Justice-Clerk.

Diss. Auchinleck. [Monboddo came over to the interlocutor.]

1774. *November* 29. ROBERT ARMOUR *against* DOCTOR JOHN GIBSON.

SOCIETY.

Whether a partner in a private company, who has renounced his share from the expiration of a term fixed by the contract when any of the partners had an option so to do, can be subjected for debts contracted under the firm assumed at their commencement, after he had ceased to be a partner?

[*Fac. Coll.*, *VI.* 367; *Dictionary*, 14,575.]

GARDENSTON. I wish that there was law for such a publication as the petitioner mentions; but I do not see that any such thing is established in the practice of merchants in Scotland: besides, there is no evidence of fraud here. The general rule of law is, that every man contracts on the faith and credit of the person with whom he contracts.

KAIMES. There are means of dissolving as well as forming a company: publication is not required in the one case more than in the other.

PRESIDENT. *Eodem modo solutum quo colligatum* is a rule of law: if there is once a recorded instrument establishing a copartnery, there might be required a publication in order to set it aside. If this private contract was known, the creditor ought to have looked into the books to see whether it was altered; without this, he could not be in safety.

COALSTON. In many cases, a publication might be necessary: but there is no fraud *here;* the defender went out when the affairs of the company were in a flourishing state.

On the 29th November 1774, "The Lords suspended the letters *simpliciter;*" adhering to Lord Kennet's interlocutor.

Act. J. M'Laurin. *Alt.* R. M'Queen.