not limit the power of the legislature. It might limit the mode of exercising that power, by making the dissolution precede the grant, and yet not limit the power itself. The Act 1633 only affects grants against law: it had no view to hurt the right of individuals.

On the 22d February 1783, "The Lords preferred Mr Gordon;" adhering to the interlocutor of Lord Ankerville.

Act. Ilay Campbell. *Alt.* R. Dundas.

Diss. Alva, Justice-Clerk, Hailes.

1783. *February 25.* Mrs Margaret Johnston *against* William Dobie and Others.

HERITABLE AND MOVEABLE.

Window-frames, doors, and the like, found within a house, when a-building, but not yet fixed to their proper places, belong to the Heir.

[*Fac. Coll. IX.* 156; *Dict.* 5443.]

Gardenston. We know no moveables that are heritable except heirship moveables. If you give a subject to the heir by implication, you must do the same as to the executors. Thus, a bargain for selling wood would go to the executors, though not a stick sold. Wise men lay in all materials before they begin to build. Do all those materials belong to the heir? In support of my opinion, there are strong texts in the civil law, and a passage of Erskine in point.

Braxfield. I am, in general, of the opinion of the interlocutor. In many cases we get much light from the civil law: but we cannot in a case like this; for the distinction of heritable and moveable was not known in that law. The texts quoted relate to questions betwixt seller and purchaser. The solid principle in the law of Scotland is, that things moveable in their nature may be heritable *destinatione*, such as bonds to heirs and bonds with substitutions. On the other hand, wadset-money, after requisition, becomes moveable, because such is the will of the party. When materials are adapted to a particular heritable use, if they do not go to the heir they may become good for nothing. Here intention is, in great measure, carried into execution.

Eskgrove. Intention alone is nothing; but, wherever there are overt acts, I cannot depart from the sense of the parties.

Justice-Clerk. Materials may be collected, and yet the work never exe-

cuted: but *here* there is a distinction,—the house *is* built, and the materials have been adapted to the building. If they do not go to the heir, they will be lost to every one else, for they are fitted to the house, *opere manufacto;* and so the subject of the succession would he diminished. There is no danger of leaving things ambiguous. If the rule of law is, that every thing moveable goes to the executor, every partition taken down will go to the executor. If the proprietor dies before such a partition is replaced, that indeed would make the law ambiguous.

On the 25th February 1783, "The Lords found that the materials destined for the house fall and belong to the heirs-at-law;" varying the interlocutor of Lord Alva.

Act. J. Morthland. *Alt.* R. Dundas.

1783. *March* 1. JAMES MURRAY of BROUGHTON, and OTHERS, Creditors of JAMES LAURIE of REDCASTLE, *against* JOSEPH M'WHAN.

PACTUM ILLICITUM.

Combination of intended Offerers at a Public Sale.

[*Faculty Collection, IX.* 164; *Dict.* 9567.]

BRAXFIELD. Here is an unlawful combination to prevent the exposer from getting the full value of the subject. The subject ought to be set up again to sale.

MONBODDO. There is no roup when there is no competition of bidders. [This proposition is crude.] The *fervor licitantium* is prevented by such combination.

PRESIDENT. Over and above the price paid, there is here a sum of money given, which would have gone to the creditors had the sale been fair.

On the 1st March, 1783, "The Lords, on a summary petition, found that the combination was illegal, and that the sale must be set aside: found the respondents liable in expenses of process, and also in the expenses to be incurred in the new sale."

For the petitioners,—Ad. Rolland. *Act.* Ilay Campbell.
