the authority of Stair, *lib. 2, tit. 9, sec. 22* and 26; M'Kenzie, *lib. 2, tit. 6, sec. 8*; and Bankton, vol. 2, p. 97; and that the opinion of these writers was supported by the understanding and practice of the country.

ANSWERED,—When these authors wrote, tacks did not receive so liberal an interpretation as is now put upon them. Moreover, their opinions are not supported by any decision, while there is a series of decisions on the other side: *Earl of Morton* against *Tenants*, *14th July* 1625,—*Howe* against *Craw*, *25th February* 1687,—*Mather* against *Lord Tarras*, *February* 1687,—*Rochead* against *Mudie*, *March* 1687.

The following opinions were delivered:

MONBODDO. I am of the opinion of the two decisions mentioned by Harcarse. This is agreeable to the Roman law, where the *conductor* might use the subject as he pleased. I can account very well for the opinion of the lawyers who doubted as to the power of subsetting. This was from feudal principles, where not land, nor money, but men were considered; and it was of moment what sort of persons were introduced into the estate of the lord: but these ideas are now obsolete.

HAILES. I doubt whether the lawyers of the last age meant that a lease for so long a term as nineteen years could not be subset, when subtenants were not excluded. Lord Stair considers a lease of nineteen years as approaching to a perpetuity; and, although this is erroneous, yet it shows that a tenant with nineteen years' lease was considered as having a great interest in the subject let. When a lease is granted for such a term, there can be no great *delectus personæ*, because no man's life is worth so many years' purchase.

KAIMES. I never doubted, since I was a lawyer, that a tack for nineteen years allowed subsetting, if not prohibited.

On the 10th March 1769, "The Lords found that the defender, in virtue of his minute of tack, accepted by the pursuer, is entitled to possess the lands libelled; and, as he is not thereby debarred from subsetting the same, therefore assoilyied the defender;" adhering to Lord Strichen's interlocutor.

Act. A. Lockhart. *Alt.* Cosmo Gordon.

1769. *March* 11. AYTON and COMPANY *against* HARRY CHEAP and OTHERS.

SOCIETY.

Copartnery, not bound by a commission executed after dissolution, by death of one of the partners, or given by one partner while ignorant of the death of the other.

[*Faculty Collection, IV.* 170; *Dictionary*, 14,573.]

HAILES. If the first part of the Ordinary's interlocutor is altered, it will fol-

low, of necessary consequence, that no man can know whether he is contracting with a single person or with a company. This will be the case when a merchant in this country deals with a person in London, but much more so when he deals with persons beyond sea: he cannot know whether the company subsists or is dissolved by the death of any of its number.

PRESIDENT. Goods commissioned on the 26th March were certainly a burden on the company; but I think that the goods commissioned on the 22d May, when Cheap's death was not known, must also be a burden of the company.

AUCHINLECK. Ayton was not in knowledge of the company being dissolved when he executed the commission of the 26th March.

KAIMES. Ayton was not bound to believe a newspaper: his information ought to have come from the surviving partner. Suppose the intelligence of Cheap's death had proved false, could he have justified himself for not sending the goods, because he had seen Cheap's death in a newspaper?

JUSTICE-CLERK. Ayton was not bound to believe a newspaper, suppose he had seen it, as the partner did not inform him of Cheap's death. The commission of the 21st May came to hand in course. It was certainly accepted; for, if the goods had not been sold to the company, they might have been sold to some one else.

On the 2d March 1769, "the Lords found the company liable for both parcels of goods." And, on the 11th March, "adhered;" altering Lord Pitfour's interlocutor as to the second parcel.

Act. R. M'Queen. *Alt.* D. Rae.

Diss. as to the second parcel, Affleck, Elliock.

Non liquet, Pitfour, Kaimes.

[Reversed on appeal.]

1769. *June* 14. MAGISTRATES and TOWN COUNCIL of CULROSS *against* The TRUSTEES of CHARLES COCHRAN.

PROPERTY.

Property in Wreck and Ware.

[*Fac. Coll. IV. p.* 180. *Dict.* 12,810.]

GARDENSTON. The right of the town of Culross is a grant from the crown, confirmed and explained by possession. The subject of the grant is bounded by the sea. If this does not comprehend the shore, there is a valuable property still in the hands of the crown, which is supposed to be in the subjects having estates on the coast; I mean the whole seaware all over Scotland. On the other side, the grant is of a later date, and there has been no possession.

MONBODDO. Here is a competition betwixt a general grant to the town of