corporation of bakers will be annihilated. All that can remain with them is the privilege of having ovens within the liberties of the city; a privilege neither useful nor profitable. As to the privilege granted by the Dean of Guild, he cannot grant a privilege inconsistent with the rights of a company over which he has no power; and indeed he does not seem to have meant to grant it.

On the 4th December 1783, "The Lords decerned against the defender;" adhering to the interlocutor of Lord Braxfield.

Act. R. Sinclair. *Alt.* W. C. Little.

1783. *December 5.* DAVID, VISCOUNT STORMONT, *against* ALEXANDER FARQUHARSON.

INHIBITION.

A, a creditor of B, used Inhibition. Sometime afterwards B conveyed his lands to a trustee for behoof of all his creditors, with power to sell. A did not accede to this trust. The lands were sold; but the purchaser was not infeft, when A claimed a preference over the price, in virtue of his Inhibition. *Found,* That he was not entitled to any preference.

LORD STORMONT being creditor to Mr Carruthers for L.1000, due by bond, used inhibition in November 1778. In March 1779, Carruthers executed a trust conveyance of his estate to Mr Farquharson for behoof of all his creditors, with power to sell the land, and distribute the price. A deed of accession was made out, which contained the following clause:—"declaring, that, in case any of the creditors who shall refuse to accede to the said trust-right, shall proceed to lead an adjudication, or other diligence, for evicting the subjects made over to the said trustees for our behoof; then it shall be competent to all and each of us to use the like diligence for preserving a *pari passu* preference to us." This deed was signed by most of the creditors; but Lord Stormont did not accede.

The trustee sold the estate in parcels to different purchasers, of whom some were infeft, but others were not. Lord Stormont having claimed a preference, a multiplepoinding was raised for the purpose of trying the question between the parties.

PLEADED by LORD STORMONT,—That the sales made by the trustee, and the trust itself, being reducible at his instance *ex capite inhibitionis*, this secures him a preference, because it lays an incumbrance on the lands, which cannot be got quit of without payment of his debt;—*Monro of Pointzfield* against *Robertson*, 1777: That, although the inhibition cannot of itself give any preference, and although it could not have that effect even indirectly, if it were in the power of the other creditors to adjudge, and come in *pari passu*, yet they cannot now adjudge lands which they themselves have sold to third parties. It is true that some of the purchasers are not infeft, but still matters are no longer entire; and the creditors, by adjudging from such purchasers, would expose themselves to claims of damages, and matters would be involved in inextricable difficulties.

It is of no consequence that the lands have been sold at their full value,—an inhibitor not being required to prove lesion in order to entitle him to reduce: Bank. 1, 7, 138. Ersk. p. 374. Dict. vol. I, p. 476.

PLEADED by the TRUSTEE,—The plea of Lord Stormont is unjust and ungracious. The execution of the trust, and all the proceedings of the creditors, were publicly conducted and announced in all the newspapers. If Lord Stormont did not intend to accede, he ought to have come forward and said so, because, in that case, the other creditors would have adjudged, and would, without question, have been entitled to a *pari passu* preference with him. That, even as matters stood, however, the claim of preference was unfounded. An inhibitor can only reduce such deeds as are truly to his prejudice,—*Carlyle*, 1st February 1739; but unless it could be said here, that the lands had been sold below their value, (which is not alleged,) Lord Stormont sustains no prejudice by the trust-deed and sales. Inhibition of itself gives no right of preference. It is only when followed by adjudication that it creates a real lien on the lands adjudged. But such adjudication could not give Lord Stormont a preferrence, because the other creditors could adjudge likewise, so as to come in *pari passu*. The trust-deed and sales following on it do not alter the case in his favour, because it is *jus tertii* to him that the purchasers might object to an adjudication by the creditors; and, as the purchaser is not yet infeft in the lands, the price of which is here in question: the case of *Monro of Pointzfield* does not apply.

The following opinions were delivered:

PRESIDENT. The case of *Ardoch's Creditors* is not in point, for Monro of Pointzfield had adjudged, and was infeft. [Mr Ilay Campbell contradicted the President as to the fact; but he erred.]

BRAXFIELD. This case may appear, at first sight, different from that of Ardoch, but it must be determined on the same principles. The action must be taken as it stands. The purchhaser holds by fair purchase, and demands possession: *that* being the case, I think that Lord Stormont is preferable. An inhibition is a real burden, and may be completed by adjudication. The purchaser will not pay the price until the inhibition is purged; so that the personal creditors cannot draw a farthing, without payment being made to Lord Stormont. As soon as the purchaser has got right, the personal creditors cannot adjudge, for the estate has been sold already with their consent.

ESKGROVE. In a competition of creditors, each man may avail himself of objections, as he is *certans de damno vitando*: inhibition is a prohibitory diligence, and no man can draw upon an inhibition. It is necessary, for making it effectual, that adjudication be led. Lord Stormont says that this is nothing, for that he *can* adjudge, and that the creditors *cannot*. In form he must adjudge, in order to obtain a preference; but he cannot plead on the rights of the creditors, or except to the trust-right, and yet plead on its consequences.

MONBODDO. It is true that, in rankings, inhibitions do not draw without adjudication; but I cousider the case as if adjudication had been led. The other creditors cannot adjudge as well as Lord Stormont, for they have consented to the sale, and cannot adjudge that which has been sold with their own approba-

tion. It is said that "there was a quality in the trust-right." *Answer*, That quality does not go into the real right.

GARDENSTON. If the ranking had gone on, Lord Stormont could not have operated any preference: If he had adjudged, the other creditors would have adjudged also. Lord Stormont stands by, and sees the estate sold. Now, the competition is for the price: here the clause in the trust-right comes in, which allows adjudication, should any non-acceding creditor adjudge.

JUSTICE-CLERK. The argument is, Lord Stormont can adjudge, but the other creditors cannot, because they have sold; but *who* gives right to Lord Stormont to plead in the right of the purchaser? *They* do not object, nor can they; for they must have seen the conditions on which the trustees held the right. Pointzfield was in a different situation from Lord Stormont; for he was proprietor, and stood in the full right by adjudication.

PRESIDENT. It will require strong law indeed to make me find that a creditor, by lying by, can make his right better.

On the 5th December 1783, "The Lords found Lord Stormont not entitled to preference."

Act. Ilay Campbell. *Alt.* R. Blair.

Reporter, Kennet.

Diss. Stonefield, Monboddo, Braxfield, Henderland.

1783. *December 5.* HELEN and ELIZABETH BURNET *against* SIR WILLIAM FORBES.

LEGACY.

A Legacy was left to a person, "to be paid when he is sixteen years of age." The Legatee survived the Testator, but died when only eleven years of age. Found that the legacy vested in the Legatee *a morte testatoris*, and was due to his nearest kin.

[*Fac. Coll. IX.* 212; *Dict.* 8105.]

GARDENSTON. At first sight I thought that the principle, *dies incertus pro conditione habetur*, would have applied here; but now I see that not only the authorities from English law and civil law, but also the authorities of different authors who have wrote on our own law, determine for the subsistence of the legacy. It is the result of those authorities that, when there are two *orationes*, as the civil law expresses it, a constitution and a term for payment, a right is vested, and must transmit.

JUSTICE-CLERK. By the words in the testament, I should have thought that a plain man would have meant that the legacy should not vest until Arthur Burnet attained the age of *sixteen;* but I cannot think myself at liberty to go against so many authorities as are urged to the contrary.