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.

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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.

BRAXFIELD. I should be against the legacy, had I never heard of the civil law, and I own that the civil law speaks less sense in this case than in many others.

HAILES. I wish that presumed will may be laid out of the question. *Here* there is every authority, at home and abroad, concurring with civil law, and I cannot venture to oppose any opinion to a concurrence so uniform and general.

PRESIDENT. Laying aside the principles of the civil law, and the authorities of English law, I should have no doubt of the legacy having lapsed. I do not think that all the subtleties of the Roman law are received into ours. It is plainly the opinion of Judge Blackstone, that, were it not for the course of decisions, the legacy, in the circumstances of this case, ought to be held as lapsed.

On the 9th December 1783, "The Lords decerned for payment of the legacy, with interest thereof;" adhering to the interlocutor of Lord Swinton.

*Act.* J. M'Laurin. *Alt.* Ilay Campbell.

*Diss.* President. *Non liquet,* Braxfield, Henderland.

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1781. *February 21st,* and *16th January,* 1784. JOHN PATERSON *against* JAMES THOMPSON.

EXECUTION—

**Of inhibition sustained, though not mentioning, *in gremio,* "witnesses to the premisses."**

[*Fac. Coll. IX.* 216; *Dict.* 3807.]

KAIMES. The great reason for giving faith to a regular execution is, that its detail leaves room for disproving particulars; but when a messenger keeps in generals, you cannot check him. Messengers ought to be cautious and exact.

BRAXFIELD. I would not lay hold on criticisms to cut down legal diligences. No man, seeing this inhibition on record, would have lent his money, from supposing that the diligence was not good: There are, indeed, omissions and inaccuracies in the diligence.

HAILES. What is it that makes null executions, but inaccuracies and omissions?

PRESIDENT. Of the same opinion; but hesitated on account of the decision 1752, *Waddel.*

On the 21st February 1781, "The Lords repelled the objection;" adhering to the last interlocutor of Lord Braxfield.

*Act.* A. Ogilvie. *Alt.* B. W. M'Leod.

*Diss.* Justice-Clerk, Kaimes, Alva, Hailes, President.

*Non liquet,* Westhall.

*N. B.*—The Lords disregarded the objection that the name of the creditor did not appear in the diligence.