an annuity falls due, he comes to be *in petitorio*. The creditors have an interest to be heard *here*: if Lady Cranston is really dead, it will be no apology for Messrs Scott that they paid *bona fide*.

On the 28th January 1779, "The Lords found that Mr Lade was not obliged to produce Lady Cranston to a Justice of the Peace, without prejudice to Messrs Scotts' withholding payment, on showing reasonable cause of belief that Lady Cranston is dead;" altering their interlocutor of ———.

Act. D. Rae. *Alt.* H. Dundas, H. Erskine.

Diss. Kaimes, Gardenston, Stonefield, Ankerville, Braxfield.

1779. *January* 29. JOHN CROOKS and OTHERS *against* JOHN TAWSE.

SOCIETY.

Creditors, in debts contracted by *socii* in a joint adventure, are preferable on the proceeds to the particular creditors of either of the *socii*.

[*Fac. Coll. VIII.* 113; *Dict.* 14,596.]

BRAXFIELD. This is not the case of a copartnery, but of two persons having a joint right in an area, and agreeing to build jointly: the building is the property of both *pro indiviso*: each might have pursued a division; but, instead of that, they agreed to sell. The price comes in the place of the subject. This is different from the case of a company, where the right of each individual is a share in the *universitas*. The method of affecting this subject is by an adjudication of each share. When a man makes furnishings for a building, he has his employer personally bound, but he has no real lien on the subject.

ELLIOCK. I never understood that there was a copartnery here, but merely a common property: this was so much the case, that, when the parties sold a storey, they divided the balance.

KAIMES. The money laid out is *in rem versam* of the partner, and consequently of his creditors.

GARDENSTON. Copartneries may be carried on in every thing that is the subject of industry. When a joint purchase of an area is made, and a house built at common expense, this is a copartnery. Creditors trust the builders on the faith of the adventure; but I think that there was an end of the adventure by the sale of the subjects.

BRAXFIELD. *That* will not do; for, if once there is a copartnery established, the creditors will have right to the funds of the company, even after its dissolution.

MONBODDO. The question, here, is not with respect to a common *property*, but with respect to a common *business*.

JUSTICE-CLERK. I admit Lord Braxfield's principles, but I deny their application to the present case. Two tradesmen, engaged in building a tene-

ment, are so far in a copartnery that persons furnishing materials to them have a right in the subject preferable to that of any private creditor.

PRESIDENT. I do not see a copartnery here; but, call it what you will, here there was a relation between two people: if one of them had become bankrupt, the creditors would have had recourse against the whole subject.

On the 29th January 1779, "The Lords found that Crooks, &c. are entitled to Porteous's half of the bond, for relief of the debts contracted by them for carrying on the joint adventure;" altering Lord Elliock's interlocutor.

Act. H. Erskine. *Alt.* A. Millar.

Diss. Elliock, Stonefield, Hailes, Braxfield.

1778. *December* 3, and 1779, *February* 4. ALEXANDER GRAHAM *against* MARGARET GRAHAM.

DEATHBED.

[*Faculty Collection, VIII.* 122; *Dict.* 3186.]

BRAXFIELD. There are two reasons of reduction libelled, and they merit different considerations. The petition lays the stress upon this question, being necessarily connected with the removing; but *that* is not to the purpose: if the pursuer has not a right by apparency, what better right has he by his general service? He serves in general as heir of the institute: *this* points him out to be the heir; but, if he has a right in his person, a service is not necessary. The use of a service is to transmit a right from the dead to the living: if the defunct had only a right of action, the general service is proper for transmitting that right of action. Here there is a real right, which he can only carry by a special service, &c. The case of Rowan, (December 1635,) to be sure, says otherwise; but I think that decision erroneous: independent of the plea of deathbed, the pursuer has no title. Deathbed is introduced in favour of the heir of the person who granted the deathbed deed: it is a privilege vested in the apparent heir; but the pursuer is not heir-of-line, nor can he make the challenge as heir to the granter of the tack, for the granter never made up titles.

COVINGTON. The challenge on the head of deathbed is competent to all heirs: the pursuer is heir of provision in the subject.

KAIMES. I am at a loss to see what title has been sustained by the Ordinary, whether the general service or the apparency.

JUSTICE-CLERK. The general service carries nothing; but I cannot get over this ground, that the pursuer is heir of tailyie. A burden is created by the apparent heir, not infeft: if the apparent heir burdens, may not the next apparent heir challenge?