

1783, *November 28*, and 1784, *February 19*. ALEXANDER MAXWELL *against*
HUGH LAWSON and OTHERS.

FOREIGN.

Medicines furnished, by a Surgeon in London, to a Scotsman sent thither for his health, and returning afterwards to Scotland, where he died, though they would have been considered as a privileged debt, if furnished in Scotland, were not held so by the Court, in an action at the instance of the English Surgeon.

[*Faculty Collection, IX. 227 ; Dictionary, 4473.*]

JUSTICE-CLERK. The law as to sixty days is out of the question. I cannot agree to the notion that a debt, preferable in its own nature, should have its preference limited to *sixty days*. This would strike at the principle of humanity, "that the life of man should be preserved, come of creditors what will." The party seems to have been under a mortal disease during the course of the account.

KENNET. I should be sorry to see the line drawn at sixty days. The mortal disease may last a year, or perhaps it may last no more than five days. The nature of the thing draws the line.

HENDERLAND. The only difficulty to me arises from the constant practice in the Commissary Court, which prefers surgeons and apothecaries for the space of sixty days, and no more.

On the 28th November 1783, "The Lords preferred Alexander Maxwell on the first account libelled;" adhering to the interlocutor of Lord Anker-ville.

Act. R. Dalzell. *Alt.* R. Corbet.

Diss. Eskgrove, Henderland.

1784. *February 12*. ESKGROVE. The question is as to *preferences*. I do not wish to extend preferences. There are many cases as equitable for allowing them as the present. The texts quoted from the civil law are not to the purpose, as Voet has shown in his title, *De Religiosis et Sumptibus Funerum*. Neither is there anything in the law of England that goes to this case. The debt was contracted in England, and, at that time, the surgeon contracting did not suppose that the party was to be brought to Scotland. As to the law of Scotland, no doubt a preference is given to surgeon's medicines; but I have a doubt as to the time. I should doubt of this preference going back

for months or years. In practice, surgeons are only preferred for sixty days preceding the death of the patient.

BRAXFIELD. In practice the preference is so limited. If a person should continue ill for three or four months, and then die, I should have difficulty; but here the account was closed in England, and another surgeon employed. It was natural for the first surgeon to have given in his account at that time. Besides, there is no evidence that the deceased died of madness, which was the distemper under which he laboured while Mr Maxwell attended him.

PRESIDENT. That cannot be the deathbed disease which continues very long. It is an arbitrary question this. I have no great difficulty in assuming *sixty days*, not on account of any analogy with the Act of Parliament, but merely as a *limited* time. Here the time was longer, and the account was shut. There must, in order to a preference, be an account-current at the time of the death. Besides, this account must be judged of by the law of England. Fifty guineas are charged for attendance. This at no rate can be preferable, for it is not on account of medicaments.

MONBODDO. We are not to look in the civil law for decisions of this question. Diseases did not continue for months among the ancients, as they do with us. [He was told afterwards that his observations might imply that the physicians of antiquity gave dispatch to their patients.] Physicians are paid on the spot, like lawyers, but surgeons and apothecaries are not. If a man is dying for fifteen months, I see no reason why that illness should not be considered as his last illness; and therefore I am for the preference.

On the 12th February 1784, "The Lords found Mr Maxwell not entitled to any preference;" altering their former interlocutor.

For Lawson,—R. Corbet. *Alt.* R. R. Dalzell.

Diss. Monboddo, Ankerville.

1784. *February 19.* ROBERT RICHARDSON *against* ARCHIBALD SHIELLS.

SERVICE AND CONFIRMATION.

The Property established by the possession of a general Disponee unconfirmed, is limited to the Subject possessed.

[*Faculty Collection, IX. 229; Dictionary, 14,377.*]

BRAXFIELD. The subject is plainly *moveable*. A right of retention does not make *heritable*. As to the titles by confirmation to Alexander Orr, the father, and