

that to scan it nicely, or loose a pin, were as dangerous as to reverse acts of indemnity.

The Lords, after some demur, sustained the answer of prescription, and found the tack could not be now quarrelled after 40 years, for lack of the patron's consent.

The minister offered to prove interruption within the 40 years, to take off our prescription. It was craved he might condescend. The Lords found his reply of interruption relevant, and assigned him a day for proving thereof.

Then we entered to debate, that, *esto* he should prevail in proving interruption, yet we behoved to be assoilyed from the pretended nullity of the tack, for want of the patron's consent; because the foresaid acts of Parliament prohibiting such tacks, *non procedunt annullando actum, sed adjiciendo aliam pœnam*. See Vinnius, *Quæstionum Selectarum Illustrium, lib. 1, Quæst. 1*; see Dury, 9th November, 1624, *Mr Thomas Hope and his Minister*, and the lawyers cited there; see our information. *Vide* Bartolum, *ad L. 20, act Prætor. D. de Novi Operis Nuntiatione, Num. 3*. But the President stopped it, because being a point *in jure*, after they saw what was the event of the minister's probation of interruption, they could hear it any time: and it was most rational to reserve it, and lay it over till that time; because if the minister prove not legal interruptions, there will be no need of debating these points.

As to the probation anent the vicarage-teinds, the Lords, at much leisure, having read the long depositions of the witnesses taken for both parties, found the Mains of Waughton liable for 24 shillings, as the price of each teind-lamb, preceding the term of _____, at which time this action was intended; as also, find Waughton, Houston, Fantasy, Myreside, Smeiton, and Prestonkirk, liable in payment of teind-wool, teind-lamb, teind-greises, and cheese, or 18 shillings for the price of ilk teind-lamb, and 8 pennies of ilk fleece of wool; and that Martle is liable for teind-wool, lamb, and greises; and that Linton, Eistforton, &c. and all the lands within that parish, are liable in teind-wool, lamb, and greises, except Overhalls and Patrick Temple's lands, which have hitherto only been in use to pay teind-wool and lamb, and excepting any other lands that are possessed *cum decimis inclusis*, or are Temple-lands or Cistercian, or otherwise privileged, and so simply free; and decern each of them to pay the respective species foresaid of small teinds, *ipsa corpora*, since the entering of the summons, and in all time coming; as also, to pay to the minister the tack-duties respective contained in their standing tacks of the parsonage-teinds produced. *Vide supra*, No. 586, *Minister of Nig*, [June, 1677.]

What are accounted vicarage? See Hadington, 19th January 1611, *Bailie of Monkland*.
Advocates' MS. No. 593, folio 291.

1677. July 7.

GAIRDNER against TENNENT.

ONE called Tennent, being charged by Gairdner on a bond, suspends on this reason, that the bond was elicited from him, by taking him in, and drinking him drunk.

REPLIED,—*Non relevat*, since *ebrius* is *duplici pœna afficiendus, secundum Pit-tacum*; *et sibi imputet*; and it was not so profound as to rob him of all use of his rea-

son ; see Matheus and M'Keinzie in their Criminals, as to deeds done *ab cbris* ; and that we have no reduction of deeds done in drink, by our law.

Forret refused to sustain the reason. Yet it deserves to be considered : for if I can reduce a deed upon fraud and circumvention, can there be a more pregnant qualification of circumvention than to drink one senseless, and then cheat them ? which is not to be tolerated nor encouraged by denying remedies against it. See Dury, 5 December 1626, *Shaw* and *Balfour* ; where drunkenness, with not being read, is sustained to take away a discharge ; and Craig's Disposition to Pittarrow reduced, *ex capite ebrietatis*, in Parliament 1661 ; *vide supra*, [Vol. II. page 290.]

Advocates' MS. No. 594, folio 292.

1677. July 7. The LAIRDS of CONGILTON, BEINSTON, and GOURLAY-BANK, competing.

IN the mutual declarators of property, pasturage, and commonty, pursued by the Lairds of Congilton, Beinston, and Gourlay-bank, against one another, the Lords having advised the commission reported, with the haill depositions taken thereon, Congilton gained the haill points of it against the other two. In this cause, there fell a great debate about the vulgar appellation of a piece land wrong designed.

Advocates' MS. No. 595, folio 292.

1677. July 10. WALTER YOUNG *against* JAMES WILSONE, &c.

IN an action of Walter Young, the son, against James Wilstone and sundry others, the Lords finding that James Duncan, agent in the cause, and formerly servant to Sir Andrew Birny, had forged an execution of the summons, and thereon stolen furth a decret against sundry pretended debtors ; they made a most strict act of Sederunt, (see my Collection of these acts,) against all indorsations on summonses in time coming ; declaring, they will not only find them null, though they be only for the first diet, but also punish the formers thereof. See M'Keinzie's Observes on the act of Parliament 1621, against bankrupts.

Advocates' MS. No. 597, folio 292.

1677. July 10. The EARL of ROXBURGH *against* JAMES HAMILTON.

THE Lords having advised the probation in the action between the Earl of Roxburgh and James Hamilton, merchant, they found the probation led by James anent the insufficiency of the bear offered to him, more pregnant than the Earl's probation, and so assoilyied him from so much of it. *Vide infra*, July, 1677, *Sir A. Ramsay* against *William Auchinleck*, No. 623.

Advocates' MS. No. 598, folio 293.