

in £20,000 Scots, as heir of tailyie of Colbrandspath. See the case and decision *alibi*.
Advocates' MS. No. 688, folio 313.

1677. *December.*

ANENT EXECUTORS.

It was inquired if an oath, given by an executor upon the inventory of the testament, where he has either omitted things knowingly and fraudulently, or given them up on oath to a notorious less value, will infer perjury, seeing this would involve many in Scotland.
Advocates' MS. No. 689, folio 313.

1677. *December 15.* MR JAMES LAUDER *against* ONE of the TENANTS of BERFOOT.

MR James Lauder, as factor constituted by the Lords of Session to uplift the rents of Berfoot for the behoof of the lady's creditors, having charged one of the tenants upon a decret in absence; he suspended, ALLEGING,—By a tack, he was only liable in such a duty.

ANSWERED,—That tack was only set to him by collusion, by David Boyd, seeking to intrude himself in possession; and it being with diminution of the former rent, and he only one creditor, he could not prejudge the rest.

Glendoick repelled the reason, in respect of the answer, and found the letters orderly proceeded against the said tenants, called Storie and Bairnsfather, for the old duty.
Advocates' MS. No. 690, folio 313.

1677. *December 15.* MR THOMAS GORDON *against* JOHN STRAITON.

JOHN Straiton is pursued for a horse stolen out of the park, at the instance of Mr Thomas Gordon, the writer, as the owner.

ALLEGED,—He must be assoilyied, unless some *culpa* be qualified against him.
 ANSWERED,—He was *in culpa*, because there was a slop made in the park-dike, out at which horses might be taken away easily.

REPLIED,—*Non relevat* to make him liable; because, *Imo*, He intimated to them, after that slop was made, that their horses should thereafter be on the inputter's peril. See the title *D. Nautæ, Caupones, Stabularii*, and the lawyers there. *2do*, That slop was not made by him, but by public authority, for carrying stones to the abbey, which he might not resist. *3tio*, He did all *quod in se erat*, for he set a guard at that slop.

DUPLIED,—Intimation *non relevat*, since *res non erat integra*; and it was *intempestiva*. *2do*, The supervenient authority is nothing to the inputters. *3tio*, Offers to prove they came and took instruments there were none watching at the slop.

TRIPLIED,—All he was obliged to do, was to set men there; he could not