

the parties. And Tait contended the removing of his wines would spoil them more than the carrying away of malt would have done. Craigie alleged there was an old statute in *Reg. Maj.* anent the giving more timeous warning for removing from cellars than from houses; but he spoke dubitatively of it, and I can find no such act.

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1678. *July 24.* JAMES HAMILTON *against* The EARL of ROXBURGH.

IN the action pursued by James Hamilton, as heritor of the lands of Nine-war, against the Earl of Roxburgh, for buying the teinds from the Earl, as tacksman, or as having right from Maurice Lawder, the first tacksman:

ALLEGED,—They belong to the parsonage of Dumbar, and so cannot be bought.

ANSWERED,—Since the parson was not in possession of them *in anno* 1627, by the King's letter, in May 1634, they may be bought.

The Lords of the Commission for Valuing Teinds inclined to sustain that they might be bought; whereupon the parties agreed, and of consent the Earl was ordained to sell these teinds at nine years' purchase, and to give an heritable and irredeemable right thereof; and decerned the valuation of them, aye till the sale was perfected, to be ten merks the boll of wheat, nine merks bear, and six merks oats.

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1678. *July 25.* LORD CRANSTON *against* TURNBULL.

IN the action between Lord Cranston and one Turnbull, it was ALLEGED there were two sorts of forfeitures; one *via facti*, (as the Earl of Dumbar used to do,) another *via juris*. Two sorts of acquisitions; one by forged accusations against men obnoxious, used frequently in the borders of Scotland; another by sale, and other lawful purchases, in the in-country. And that there were two kinds of treason; one *juris communis, in principem, vel perniciem reipublicæ*; another *juris statutorii*, as theft in landed men, a fictitious and umbratile kind of treason, and, to speak strictly, no treason at all.

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1677. *February 14 and July 27.* The DUKE of BUCCLEUCH *against* The Earl of TWEDALE.

*February 14.*—IN the pursuit, Duke of Baccleuch against the Earl of Twedale, mentioned *supra*, in February 1676, [page 72,] the Lords advised it this day: the interlocutor was long, and must be inquired after. They found the King's ratification of the contract, as father to Monmouth, not sufficient to bind him, &c. The most material parts of it went against Twedale.

*Advocates' MS. No. 545, folio 275.*

*July 27.*—In Baccleuch and Twedale's cause, after a new hearing, impetrated

by Twedale, the Duke of Lauderdale being present, they adhered to their former interlocutor; and found the testament of umquhile Francis, Earl of Baccleuch, appointing the overseers to apply his rents, during his children's minority, towards the payment of debts, imported an universal legacy of the dead's part to the heir. *Advocates' MS. No. 626, folio 298.*

#### ANENT DEEDS EXECUTED IN PRISON.

It is thought deeds done by men in prison, in favours of them who imprisoned them, are not valid *in quantum* they exceed the preceding ground of debt; and therefore we have a foolish custom of bringing them out of prison for granting writs; for, since they return, that imports nothing in law. See *Peckius de Jure Sistendi*, c. 43; and *July 1672, Eshintilly. Executio juris non habet secum injuriam*; but if the messenger detains them in a private house, and there they grant bond before they go to prison, it is thought the said writs may be quarrelled, as being granted *per vim et metum*, and as done *in privato carcere*. See *10th January 1677, D. Hamilton against Castlemilk. Vol. I. Page 12.*

#### ANENT WRITS NOT SUBSCRIBED BY THE PARTY.

A CONFESSION emitted in an inferior court *non probat*, unless it be subscribed by the party, if he can write. Yet if the clerk of the said court be a notary, and if the emitter of the confession and declaration cannot write, I think the clerk's assertion, as notary, will bind him, to the extent of £100 Scots, and not above; unless there be two notaries, and it be proven that he gave them command to subscribe for him; in which case it would bind as a bond. See *28th January 1671, Gibson,—Mackienz. Crim. p. 418, and Observ. on the Act 1621,—Durie, 17th June 1624, Clerk,—Stair, 16th July 1661, Osburn.*

#### ANENT WITNESSES TO SUBSCRIPTIONS.

WHERE five or six are subscribing a contract or other writ, as parties, the Lords have refused to repute them as witnesses to one another's subscriptions, thereby to sustain the writ against that nullity. *Vol. I. Page 12.*

#### ANENT JUDICIAL ROUP OF LANDS.

THE Lords ordained a roup to be made of the estate of Cunnochie, in Fife; which ordinance proceeded on a supplication given in by the debtor craving the same: whereupon Forret was named judge thereto, who emitted a precept to warn all, both at the parish-kirk and market-cross of the shire, who had any interest, to be present such a day in Couper, and bid therefore; and, that there may be no fallacy, the tack warrants the rental. See *March 1677.*

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1678. *November 6. ALEXANDER MILN against THOMAS HAY.*

MR Alexander Miln, late provost of Linlithgow, and Mr Thomas Hay, clerk,