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 10*th 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 28*th January* 1671, *Gibson*,—Mackienz. Crim. p. 418, and Observ. on the Act 1621,—Durie, 17*th June* 1624, *Clerk*,—Stair, 16*th 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.

1678. *November* 6. Alexander Miln *against* Thomas Hay.

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

having each of them an infeftment of annualrent, for security of some money, due furth of Stewart of Kettleston's lands; Mr Thomas was infeft in several lands lying in Linlithgowshire, and in others lying in East Lothian. Alexander Miln was only infeft in the lands in Linlithgowshire. A competition arising betwixt them, in a poinding of the ground, which of the two infeftments should be preferred; Mr Thomas produced a discharge, granted by him to the tenants of the lands in East Lothian, of their farms, which proved his right and infeftment was clad with possession. Alexander craved to be preferred *quoad* the lands in Linlithgowshire, because he produced a decreet of poinding the ground against these tenants; and contended, that Mr Thomas producing nothing to instruct his infeftment to be in the least clad with possession *quoad* these lands, which were a different subject from the other, he ought to be preferred *quoad* them. Notwithstanding whereof, the Lords, this day, found Mr Thomas his infeftment preferable; and that his possession he had attained of the East Lothian lands, being prior to Alexander's decreet of poinding of the ground against the other, the *jus annui reditus*, being indivisible, was sufficient to clothe his right with possession *quoad* both, though they were upliftable out of different subject-matters, and lands lying in divers shires: and inclined to find that it was in a party's option, who had infeftment out of sundry lands, to take him to any of them for his annualrent. Yet Sir George Lockhart was of opinion, that, in such a case, law obliged him *cedere actionem* to others who had real rights on the other affected lands and tenements, unless he could condescend upon a prejudice he had thereby. See 21*st February* 1671 and 22*d June* 1671. Possession of a part was found sufficient for the whole, Durie, 17*th December* 1628, *Chalmers*.

Yea the Lords found, in a case less favourable, where one had got an infeftment of annualrent furth of some lands, and thereafter an infeftment in other lands, in corroboration of the first, and was in possession of the lands contained in the corroboration; but thereafter finding them encumbered, and being willing to recur to the first lands; the Lords sustained his possession, as if it had been in the whole, against another infeftment that competed with them.

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1678. *November* 13. Sir R. Hepburn of Keith *against* David Borthwick.

In a cause, pursued by Sir R. Hepburn of Keith against David Borthwick his tenant, for removing; as also for leaving so much fulyie on the ground, at his departure, as was contained in his tack: it came here to be questioned, if he was obliged to leave lime, since that was the usual way of improving and gooding land in East Lothian, at least in that corner of it. It was thought lime would not come under the general name of muck, because it has other more principal ends and designs, besides the bringing in of barren lands, *viz.* in building, &c.

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