

time of the roup, else he would not have bid so great a price. Yet the Lords thought, where a party does not know the holding of lands, they ought to presume they are ward. But this was reserved to further consideration.

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1694. *July 11.* WALTER BUCHANAN and JOHN ANDERSON, Tacksmen of the Milns of GLASGOW, *against* The MAGISTRATES thereof.

THE reason of suspension was, They craved abatement, because there was a committee named by the town-council, to consider on their losses, and they had made a report that they deserved some ease.

The Lords found, that the report of a committee, not approven, was not probative; though some urged it might be produced before answer.

The next point put to the vote was, Whether it was a relevant exception against paying the whole tack-duty, that a contest arising between the magistrates and the maltmen, anent their obligation to go to the milns with malt bought within the thirlage, there was a great abstraction during that time, whereby they were losers.

The Lords considered, that setters of tacks were not bound to warrant against these eventual chances in fact, but they took them with their hazard. If the maltmen had prevailed, it would have afforded a ground, as being *in jure*: but they having succumbed, they had a clear remedy against them, by pursuing them for abstracted multures. And, therefore, the Lords also repelled this allegiance; though some thought there might be oppression to exact the whole in such a case.

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1694. *February 16 and July 11.* MARY GRAY, LADY EDINGLASSIE, *against* SIR JOHN GORDON of PARK, &c. her Curators.

*February 16.*—MARY Gray, Lady Edinglassie, against Sir John Gordon of Park, and her other curators, for making up her damage, in not securing her in her jointure upon her contract of marriage. The Lords thought it would be hard, and dangerous, to overtake curators on such nice omissions; seeing they are bound to act, in their minor's affairs, as rational provident men do in their own. And, seeing they had consented to dispoise her tocher of 25,000 merks to her goodfather, Sir George Gordon of Edinglassie, and had nominated no friends, at whose instance execution should pass, for implementing the contract to herself and her children; and, though they had inserted a procuratory of resignation, yet there was no precept of seasine on which she might have been summarily infeft, and afterwards confirmed that base seasine: therefore, they ordained the curators, subscribers of her contract, to expedite her infeftment presently, on the procuratory of resignation foresaid, conform to the new Act of Parliament 1693, on their own charges and expenses; reserving to themselves to consider, how far they may be made liable for her damages, in the