

and therefore if the tack was to endure for any space it was of necessity that the tenant should have the use and disposal of these things, for otherwise there would be a moveable subject entirely locked up from commerce, as it was admitted that the master could not dispose of it. The President was of this opinion; but he thought that the last year of the tack, when the steelbow was to be restored, it was to be considered as rent, for which the master had an hypothec over all the goods upon the farm; and the fact here was, that the tenant renounced his tack, and soon after died, upon which the master took possession of the farm, and all the stocking upon it, and the creditors of the tenant confirmed themselves executors, so that the goods were *in medio* and in possession of the master; and therefore all the Lords agreed in preferring him.

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1764. August 8. DUKE of HAMILTON, &c. against MR DOUGLAS.

IN Mr Douglas's service as heir to the late Duke of Douglas, there were produced by Mr Lindsay, town-clerk of Edinburgh, who was called as a witness for Mr Douglas in his service, certain letters said to be written by one Pierre La Mar, a man-midwife, to Sir John Stewart, concerning Mr Douglas's birth. The Duke of Hamilton raised a reduction of the service, and when this process was going on, he insisted in an improbation of these letters, and craved that Mr Douglas and his curators might be ordained to abide by them *sub periculo falsi*: but the Lords unanimously found that they were not obliged to abide by them in that way; and therefore they dismissed the improbation as incompetent, reserving to the Duke of Hamilton to prove these letters forged in the process of reduction. Lord Coalston thought that the improbation was competent, but that the defenders might abide by these letters *qualificate*. The President, on the other hand, thought that there could be no abiding by in that way, but the defenders must either give up the letters altogether, or abide by them *simpliciter, sub periculo falsi*. The principle of law in this case seems to be, that an improbation is truly a criminal process, though carried on in the civil court, founded upon the presumption that a person who has in his custody, and produces a forged deed, is the forger; but if the deed is produced, not by the party, but by a witness in a cause, that presumption ceases with respect to the party, and there can be no process of improbation against him, but only against the witness who produces the deed; though in the cause with the party the deed may be proved to be forged in order to take off the evidence arising from it

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1764. December 12. CREDITORS of THOMSON and TABOR Competing.

AN English merchant became bankrupt, having many debtors in Scotland, who owed him money by bills payable in Scotland, and by open accounts. A statute of