

1787. *February 28.* JAMES MILN of Old Montrose, Esq. *against* DAVID MITCHELL.

## TACK.

A tenant not entitled to set up an ale-house on his farm.

[*Faculty Collection, IX. 498 ; Dictionary, 15,254.*]

SWINTON. A baron may make regulations for his barony. Ale-houses are nuisances, and he may exclude them.

MONBODDO. The landlord lets his ground for cultivation, and in that way alone can it be used.

HENDERLAND. No tenant can deteriorate the subject let. So it was found in the case of *John Balfour against George Inglis of Reidhall*; and in a later case from Dunbar, where an attempt was made to turn part of a lodging-house into a tavern. But these cases do not apply. Here the tenant does not deteriorate the subject by keeping an ale-house; on the contrary, he is benefited, and consequently his master. A baron has a right to erect a brewery, and then to prevent the importation of ale not brewed there; but here there is no brewery erected.

PRESIDENT. Is there no harm to erect a tippling-house to debauch my servants, and to collect together all the vagrants and thieves of the country?

ESK GROVE. I have no desire to deprive barons of any right belonging to them; but, on the other hand, I do not see how they can limit men in the lawful exercise of their calling. If the baron does not use his privilege of brewing, he cannot prevent others from selling ale. [He ought rather to have said, from buying ale; for, if the baron does not choose to sell ale, it would be unreasonable to say that the inhabitants of the barony must not *buy* ale for their own use; but that is nothing as to the power of *selling* ale.] A proprietor has no cause to complain so long as the subject is not deteriorated: he cannot prevent the introduction of manufactories.

On the 28th February 1787, "The Lords refused the bill of advocacy;" adhering to the interlocutor of Lord Braxfield.

*Act.* Henry Erskine. *Alt.* James Clerk.

*Diss.* Henderland, Eskgrove.

1787. *February 28.* ALEXANDER M'PHERSON *against* ROBERT ETTLES.

## MESSENGER.

IN this case, the Lords were of opinion:—1st, That the constituent was liable for the act of the messenger in whose hands he had put the diligence,