

it shall be leasum and lawful to him at any time in his lifetime, *etiam in ipso articulo mortis* to uplift it, dispose of it, leave it by his heir to him he pleases, &c. : or thus, where a man and his wife are infest upon a comprising in liferent or conjunct fee, and his three daughters in fee (this is *Magnus Ayton's* case), but with this provision that it shall be lawful to him, albeit the fee be provided to his daughters, to uplift the sum at any time in his lifetime though on death-bed, and dispose and use it at his pleasure, the question falls whether or no by virtue of this act *inter vivos* a man can validly dispose upon his heritage *in lecto ægritudinis* to the prejudice of his heir, so that it will defend against a reduction intended by the heir *ex capite lecti*.—See more of this in *February 1670, Mossman* against *Bells*, No. 7. *Advocates' MS. No. 160, folio 94.*

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1671. *March* Anent the JURISDICTION of the COLLEGE of JUSTICE.

It is uncontroverted but the members of the College of Justice *in civilibus*, have *præscriptionem et privilegium fori*; none others, by acts of Parliament, being judges competent of their civil actions but the Lords of Session only. But whether it be so *in criminalibus*, as riots, or the like, may be much doubted. Paulus Voet in his tract *De Statutis*, page 282, states this question, and thinks an exemption to advocates, from answering to inferior courts of this kind, should not extend to criminal actions. Upon the one hand, it seems that the magistrates of Edinburgh, (though justices of peace within themselves,) nor no inferior judges to the Lords of Session, Secret Council, or Justice, can meddle with them, because by act 29th, Parl. 1661, ratifying the whole College of Justice's privileges, it is declared, that all liberties and immunities belonging to the Lords of Session are extended to belong, and appertain by the advocates and all other members of the College of Justice; but *ita est* by express act of the same Parliament, *viz.* act 38, containing instructions to the justices, the said justices of peace have no power to meddle with the Lords of Session; *ergo* neither with the other members of Session. (*Vide infra, February 1678, No. 721.*) Yet by that same 38th act, it would seem in the matter of riots and such like, the members of Session may be punished and proceeded against by the justices of peace, and consequently by the magistrates of Edinburgh, because they are empowered to proceed against all offenders whatsoever, under the degrees of noblemen, prelates, counsellors, and senators of the College of Justice; unless we say the whole members of Session must be understood there under the Senators of the College of Justice, as enjoying all the same privileges with them. Our privileges got a sore dash in 1670 by the eighth act of that Parliament, where the Lords of Session their privileges are ratified, and nothing of the rest—See my animadversions on that act.

*Advocates' MS. No. 161, folio 94.*

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1671. *March 9.* Anent the KING'S HYPOTHEC.

SEVERAL creditors contending for the escheat of James Hamilton the Collector, before the Exchequer, Mr. Stamfield was preferred to it, but with the burden of 5 or 6000 pounds Scots, due by the rebel to the king for custom and excise,

which he behoved presently to lay down over the board ere they would exped the gift to him. This quality being so heavy, made him doubt much if he should so accept the gift or no. This speaks the king's privilege of a tacit hypothec, by which the law prefers him to all others for his dues, though never so lawful creditors.—See June 10, 1631, and my marks there, *Peebles against Scot.*—See Manuscript E, *June 16, 1681, Broomhal*, page 202.

*Advocates' MS. No. 163, folio 95.*

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1671. *March 9.* SIR ANDREW RAMSAY of Abbotshall, *against* The LAIRD of Bogie.

THE lands of Abbotshall, Milnetoun, Bogy, Benochy, Basusney, Walkerlands, commony of the burgh of Kirkcaldy, and divers other lands lying thereabouts, being all ancient feus of the abbacy of Dumfermling, are clogged and affected in the very bosom of their original rights and infestments with this express burden and reservation, that it shall be leasum and lawful to the burgesses, indwellers of the burgh of Kirkcaldy, owners of the saltpans there, to dig, win, work, and carry away coals, limestone, clay, and quarrell, within any part of the bounds of the lands liable in manner foresaid, for furnishing of coal to the use of their saltpans; by which it appears the pans have been the oldest feu, and the foresaid lands being feued out thereafter by the abbot and convent, they reserved the whole coal for the use of the said pans. Henry Millar, James Turpie, and several other persons in anno 1632 having the heritable and irredeemable right of the saltpans within the burgh of Kirkcaldy, and consequently the sole right to the coal within the lands aforesaid, finding themselves unable to compass so great a design as the bringing of a coal to be a workable coal, and that it would require a person of substance and power to effectuate it, they enter in a transaction with the Earl of Dalhousie, then heritor of Abbotshall, by which they dispone to him the hail right they and their predecessors have or derive from the monastery of Dumfermline, to the coal not only within his own lands, but also within Bogie and the hail other lands, which by their old infestments stand liable to them in coal; providing he furnish them coals for the use of their pans at such reasonable rates as he and they should agree upon from time to time. In prosecution of which right the Earl in 1637 did put down an eye within his own lands, (and as they say, did cost L.10,000 Scots in the whole,) brought it to be a workable coal, and conform to his agreement with the pan owners, he served them upon their own expenses. Notwithstanding of this right in the Earl of Dalhousie's person, Sir John Weimes of Bogie, in anno 1646, clandestinely procured a signature from his Majesty, ratifying to him four saltpans, the right whereof he had acquired from the pan-owners; and withall takes a gift from his Majesty, (as having succeeded in place of the commendator,) of the whole coal within the bounds of the hail lands, standing obliged by their original feu charters, to furnish coals to the saltpans of Kirkcaldy; and in a compliment, forsooth, sends a discharge of this his gift, in so far as it might extend to Abbotshall and Westmilne, to the Earl of Dalhousie.

In this posture affairs stood till Bogie having of late acquired the right of two other saltpans, and grudging that Sir A. Ramsay (who had succeeded in the right