

can be loosed. Hence the deliverance of all bills for loosing arrestments bears, If the same be not laid on by virtue of a decret.

Advocates' MS. No. 232, folio 107.

ON a Baron's decret or rollment of Court, the Lords will not grant by letters of horning summary execution, because of the meanness of their jurisdiction; and that the acts of Parliament, viz. act 10 *anno* 1606, and act 15, 1609, &c. appointing letters of horning to pass on sheriffs, stewarts, bailies, (as well of royalty as regality,) admirals, and commissaries, (though they are only foisted in by a wrong narrative in the said act 1609,) their acts and decreets, make no mention of baron courts; and therefore when horning has been craved on the decreets of the bailies of Leith, it has been refused because it is only a burgh of barony; (yet horning passes on the decreets of the first bailie there, because he has a sort of admiral power;) and the sole execution can pass upon such, is the baron or his bailie their precept to their officer for poinding the defender (if so be he was subject to their jurisdiction,) his goods or geir lying within the barony: the apprising whereof, in my judgment, should not be at the market cross of the head borough of the sherifdom or regality wherein the barony lies, seeing that is *extra territorium*; but at the place where the baron court is kept, which undoubtedly will suffice. And if the baron or other person who has recovered decret before the baron bailie would have letters of horning on his said decret, he must suit letters conform, either before the sheriff or Lords of Session, or crave the defender to pay such a sum contained in the rollment of court, and produce his said decret *in modum probationis*, and then on the decret conform given by the sheriff or Lords, he will get *paratam executionem* by horning. And truly it is just it should be so, because of the universal ignorance of the baron bailies; and seldom there are any thing proponed for the defenders, but allenary, The bailie having considered the complaint of sic a man against sic a man, found——. Yet if a man be decerned in such a court for contumacy in refusing to give his oath, the matter being referred thereto, and he being present in Court, I think the Lords should not repone him again to his oath.*

Advocates' MS. No. 233, folio 107.

ANENT LETTING OF DEBTORS' LANDS.

WHERE a creditor (whether he be compriser or infetter,) is in possession of the debtor's lands, and finds the same so racked that if the tenants get not an ease in

* *Infra*, May, 1676, No. 474 [Hamilton, Historical Volume;] and 496, § 2, [Balfour against Pidgeon, 10th October, 1676, Historical Volume.]

the rent they pay, they will forsake the ground and leave it waste, and none will take it on those terms they had it ; for his own security that he be not made countable, either by the debtor or co-creditors, for the rental the land was at when he entered, and lest it be obtruded he had not power to give the tenants any thing down of what they paid, or set the land cheaper than he found, his safest course will be to cause intimate, by the space of three sundays, at the kirk doors of four or five of the most adjacent parish churches, that he is about to set such and such lands lying in such a parish, &c. for payment of the yearly duty of , and if there be any person who will be willing to pay more than what he is to set it for to the present tenants, let them come and they shall have it. Which solemnity being done, and none appearing to offer, he may then without hazard set it as he can best agree, with the least diminution and prejudice to the heritor that he can. And this was used by Sir William Dick's creditors in the lands of North Berwick.

I think this course should be taken by all who have not *plenum dominium*, but may be drawn to an account, as tutors and the like ; or they may crave this by a bill given in to the Session. See *27th of January, 1680, Clelland and Laminton ; item 15th February, 1681, Littlejohns. Advocates' MS. No. 234, folio 107.*

Anent a BASTARD'S TESTAMENT.

As for that rule of law, *Bastardus non habet testamenti factionem*, I think it only militates in the case where he has no children procreated in lawful marriage; in which case, without a letter of legitimation, he cannot prejudge the king or his fisk by way of testament ; (for he may lawfully dispoise either moveables or unmoveables in his *liege poustie* ;) but where he has lawful bairns, he may certainly test upon his moveables, and name his bairns executors to him, (*Queritur*, if he may name strangers,) since they would succeed to him *ab intestato* in these goods. *Vide infra, February, 1676, No. 471, § 7, Lord Colville.*

Advocates' MS. No. 235, folio 107.

1671. *November.*

THE beginning of this session, the Lords appointed what processes had been seen the summer, should not be seen again in this winter session, but come in according to the order of their enrolment ; notwithstanding the act of sederunt of the 8th of November, 1665, ordering processes seen in the summer to be seen again in the winter, but not *e contra* ; which act they hereby abrogate.

Advocates' MS. No. 237, folio 108.