

1678. July 19. FOTHRINGHAM of POURIE against The MARQUIS of DOUGLAS.

IN Pourie Fotheringham and the Marquis of Douglas's case, the Lords found the adjudication null, but restricted it to the sums contained in the bonds whereupon it was led. *2do*, In Pourie's cause against Hunter of Burnside, "they found, where a clause irritant (resolving the feu on cessation, *per triennium*, to pay the feu-duty,) is in a charter, and a reduction is raised by the superior for annulling the feu, for [the vassal's] not paying the feu-duty by the space of three years, that the said failie cannot be purged at the bar; but if the feu or other charter want that resolute irritant clause, and the declarator only concludes amission of the feu, upon the 246th Act of Parliament 1597, as inherent *de jure et ex natura rei*, the Lords declared they will find that *mora* purgeable at the bar, any time *ante sententiam in declaratoria obtentam*." *Vol. I. Page 10.*

1678. July 20. GEORGE DRUMMOND against JAMES DUNBAR, Messenger.

THE Lords having this day advised the process against James Dunbar, messenger, for paying the debt, because he had suffered the Earl of Morton to escape, (*vide* 27th November 1677;) The Lords assoilyed the said James; because George Drummond, the employer, being present with the messenger, did not bring halbardiers, from the town's-guard, to assist the messenger, which he might have done, being within the Town of Edinburgh, and at the cross, so near to the court of guard. *Vol. I. Page 10.*

1678. July 24. ANENT the EXAMINATION of an AGENT.

THE Lords ordained an agent to be summarily examined upon a bill, although it was alleged, since the regulations and Act of Parliament 1672, Agent was not *nomen juris*, and so no member of the house, and ought not to be examined but by way of action. *Vol. I. Page 10.*

1678. July 24. TAIT against ROBERT CAMPBELL.

IN Tait's suspension against Robert Campbell, apothecary, his removing, a practick was alleged to have been decided between Thomas Wilson and Nicol Hardie, who pursued Thomas to remove from a brew-house in 1671: that the Lords superseded the removing till the Martinmas, in respect Thomas had some victual lying in the lofts, which he could not transport conveniently, nor get brewed off till Martinmas. But I saw the decret, which mentions no such inducement moving the Lords, but only the ambiguity of a minute passed between

the parties. And Tait contended the removing of his wines would spoil them more than the carrying away of malt would have done. Craigie alleged there was an old statute in *Reg. Maj.* anent the giving more timeous warning for removing from cellars than from houses; but he spoke dubitatively of it, and I can find no such act.

*Vol. I. Page 11.*

1678. *July 24.* JAMES HAMILTON *against* The EARL of ROXBURGH.

IN the action pursued by James Hamilton, as heritor of the lands of Nine-war, against the Earl of Roxburgh, for buying the teinds from the Earl, as tacksman, or as having right from Maurice Lawder, the first tacksman:

ALLEGED,—They belong to the parsonage of Dumbar, and so cannot be bought.

ANSWERED,—Since the parson was not in possession of them *in anno* 1627, by the King's letter, in May 1634, they may be bought.

The Lords of the Commission for Valuing Teinds inclined to sustain that they might be bought; whereupon the parties agreed, and of consent the Earl was ordained to sell these teinds at nine years' purchase, and to give an heritable and irredecimable right thereof; and decerned the valuation of them, aye till the sale was perfected, to be ten merks the boll of wheat, nine merks bear, and six merks oats.

*Vol. I. Page 11.*

1678. *July 25.* LORD CRANSTON *against* TURNBULL.

IN the action between Lord Cranston and one Turnbull, it was ALLEGED there were two sorts of forfeitures; one *via facti*, (as the Earl of Dumbar used to do,) another *via juris*. Two sorts of acquisitions; one by forged accusations against men obnoxious, used frequently in the borders of Scotland; another by sale, and other lawful purchases, in the in-country. And that there were two kinds of treason; one *juris communis, in principem, vel perniciem reipublicæ*; another *juris statutorii*, as theft in landed men, a fictitious and umbratile kind of treason, and, to speak strictly, no treason at all.

*Vol. I. Page 11.*

1677. *February 14 and July 27.* The DUKE of BUCCLEUCH *against* The Earl of TWEDALE.

*February 14.*—IN the pursuit, Duke of Baccleuch against the Earl of Twedale, mentioned *supra*, in February 1676, [page 72,] the Lords advised it this day: the interlocutor was long, and must be inquired after. They found the King's ratification of the contract, as father to Monmouth, not sufficient to bind him, &c. The most material parts of it went against Twedale.

*Advocates' MS. No. 545, folio 275.*

*July 27.*—In Baccleuch and Twedale's cause, after a new hearing, impetrated