

in desuetude. All the arguments against its validity are merely arguments *ab incommodo*. The wisdom of the statute is this, that it does not restrain gaming, but only prevents the excess, and disappoints the harpies who would otherwise prey on the young and unwary. There is no great harm although the law were put in execution as to public-houses. If inn-keepers were deprived of the privilege of the burgh when they offended, it would give me no pain. I cannot distinguish between this question and a horse-race. It is a mistake to suppose that a horse-race is always run on level ground. The course at Penrith is on the side of a hill. If the law were to be so interpreted, men would have nothing more to do than to use the highway instead of a course. *First at the hare* is a trial of skill. But suppose it a race, I should think that he who ventures more than 100 merks on such a wager, acts injudiciously, and must stand to the consequences.

On the 16th December 1774, "the Lords sustained the title of the Kirk-session;" adhering to their interlocutor of the 14th July 1774.

*Act.* A. Wight. *Alt.* A. Crosbie.

1774. December 24. ARMSTRONG against His CREDITORS.

*CESSIO BONORUM.*

IN this case the pursuer of the *cessio bonorum* made oath that he had not cancelled any writings, but he omitted to say that he had not put any writings away. The Lords found that the oath was incomplete, and refused to set him at liberty, although there was no opposition made by the creditors. It was said that the modern practice of paying creditors by a *cessio* ought not to be favoured beyond the letter of the law; and that a man, making such an oath, might put away writings, and so defraud his creditors: That if he had sworn that he had not put away, it might be concluded that he had not cancelled any writings; but not *vice versa*.

For Petitioner, D. Armstrong.

1775. January 17. GEORGE HAY against JAMES HAY.

PASSIVE TITLE.

Found that a person passing by his father, who was three years in possession, as apparent heir, and also passing by his grandfather;—the person last infert base, and making up titles to a remoter predecessor, who was the last publicly infert in the lands, is liable for the debts contracted by his father upon the statute 1695.

[*Folio Dict.*, VII. 4; *Dictionary*, 9755.]

COALSTON. The words of the statute are *remoter predecessor*: the defender