1781. *July* 4. GEORGE, &c. GRIERSONS *against* WILLIAM KING.

WRIT.

[*Fac. Coll. VIII.* 111; *Dict.* 17,054.]

MONBODDO. The subscription is acknowledged: that is sufficient; but the subject did not fall under the *jus mariti.*

BRAXFIELD. Before the term of payment arrives, the subject is simply moveable: here the term of payment was the term after the death of the testator, and at that term the woman was married, so that the subject fell under the *jus mariti.* But I doubt as to the other point: the transaction was of that nature as to require writing, and the writing here adhibited is improbative.

PRESIDENT quoted decision, *Foggo* against *Millican*: acknowledgment may do: when the subject of the writing does not require solemnities.

On the 4th July 1781, "The Lords repelled the defences;" altering Lord Kaimes's interlocutor.

Act. R. Cullen. *Alt.* Mark Pringle.

1781. *July* 14. JAMES RYMER *against* ALEXANDER MACINTYRE.

HOMOLOGATION—APPRENTICE.

Informal Indenture homologated by the Service having taken place.

[*Faculty Collection, VIII.* 1128; *Dictionary,* 5726.]

BRAXFIELD. If a statutory nullity is not capable of being waved by homologation, the objection will not cease even after the years of prescription, and thus prescription may come to be no good defence even in land-rights. When a tack is liable to a statutory nullity, if the parties go on to implement, the objection flies off,—so also in marriage-contracts, if marriage ensue: here the apprentice entered to the service, and continued in it for three years:—was instructed and maintained by the master. This is sufficient to found a plea of homologation.

On the 14th July 1781, "The Lords found the cautioner liable, in respect

that the apprentice entered to the service, and was taught and alimented by the master;" altering the interlocutor of Lord Hailes.

Act. H. Erskine. *Alt.* D. Rae.

N. B.—I do not recollect to have seen this equitable interpretation of the Act 1681 ever extended before to the case of cautioners.

1781. *July* 24. MR JOHN EWART *against* CHARLES, &c. GRIERSONS.

GLEBE.

Import of arable lands in the statute 1663, c. 21.

[*Fac. Coll. VIII.* 39; *Dict.* 5162.]

BRAXFIELD. After the lapse of 118 years since the date of the statute 1663, it is strange that lawyers should differ as to its interpretation. It is necessary to inquire into the state of agriculture in 1663, in order to understand the meaning of the Act 1663. In those days, every thing capable of being ploughed was ploughed: the farmers ploughed and left lee in rotation; but there was another part called *croft* or *infield*: all the dung that could be raised on the farm was bestowed on that ground, and it was constantly cropped. Had a tenant suffered his croft land to lie lee, he would have been considered as a ruined man. The opinion delivered by Lord Kilkerran, in *Sir William Dalrymple's* case, appears to be a just one: otherwise a minister could get nothing for grass, except mosses and moors. By cows, the legislature understood milk-cows; and it could not mean to allocate such grass as was incapable of producing milk. It was not the intention of the legislature to give bad and useless ground: enough is admitted in this case to decide that the lands in question are not croft-lands, or arable. These lands have not been touched with a plough for ten or eleven years: the inquiry ought to be, what is the present situation of the land, not what the land may hereafter yield.

KAIMES. If I were to interpret the Act of Parliament according to the present mode of husbandry, it would be hard to discover its meaning; but when we consider the old method, light breaks in upon us. In 1663, there was croft land, and a great deal of outfield: what else could be allotted to a minister for grass but a part of that outfield? If the ground is poor, the minister gets so much more: if good, so much less. The pasture must be such as to feed two cows and a horse: they must not be barely kept alive; they must be made useful. Twenty pounds Scots, the alternative in the Act, would, in 1663, have found grass for two cows and a horse; for, at that time, there was a superfluity of grass,—at present grass cannot be had at that moderate rate.

MONBODDO. The value of the land is a material consideration. This land is *arable;* exceedingly fit for ploughing; has actually been ploughed; and there