

ligement to infest; which, though it had carried, yet it could never have defended, because no seisine was ever taken thereon.

DUPLIED,—This relict can never be heard to quarrel the right alleged on, because she has homologated the same, in so far as she received the tack-duty of sundry years bygone, and so has acknowledged the tack. *2do*, It is a formal enough tack; and for the pretence that it wants an ish, the same ought to be repelled, because it has a most expressive ish, viz. when the sum shall be paid; and offered to adduce sundry practiques where this was sustained, and namely, one *in terminis* out of Dury, on the *25th of January 1625*, betwixt *Ronald* and *Strang*.

TRIPLIED,—The pretended homologation is ridiculous, seeing it imports a deed of one's own; and none can homologate the deed of another unless he represent that other; now there was no deed of the relict's here that she could homologate, the tack being set by her husband, (if so be it be one,) and she being no party therein. As to that part of the duply alleging the tack to be valid, and to have an ish, because it bears aye and while the money be repaid, and the practiques for the same, Triplies, They have contrary practiques more pregnant; for, *first*, they have five to one; *2do*, They have a late one, viz. in 1664. As for Dury, he is clear in the *12th of July 1621*, *Laird of Muckhall*.

The Lords did not determine this point about the validity of the tack, because they found the writ a wadset, and so null *quoad* the relict, because not made real by infestment.

Ex multitudine authorum quod melius et æquius est non est judicandum, cum possit unius et deterioris sententia alias omnes superare; Justinianus, *in constitut. de conceptione Digest*. Yet in Italy, where they judge by the opinion of the doctors, he who brings maniest, providing they be classic, wins the cause.

Advocates' MS. No. 276, folio 117.

1671. *December 1.*

THE Sheriff of Stirling having granted a precept for arresting a sum in the hands of _____, who dwelt within the bounds, and this precept being executed against him, personally apprehended, but within another sheriffdom, it was much questioned if the arrestment was validly executed, seeing it was *extra districtum seu territorium*, and so should have been done by letters of supplement; for an execution at the dwelling-house, in this case suffices not. I think it was illegally done.

Advocates' MS. No. 277, folio 117.

1671. *December 5.* MR. ARCHIBALD STEWART *against* WIELAND.

MR. ARCHIBALD STEWART, son to the Countess of Murray, alleging and suspecting one Wieland, a servant of his mother's, to be an ill instrument betwixt