

of Exchequer made in 1672, act. Their prices are usually set very easy, just as the town of Edinburgh commonly deals with their vassals. This year, 1677, the wheat paid into the Exchequer is estimated to L.5 the boll, the bear to L.4, and the oats to L.3.

IV. Before the year 1646, a suspension of a debt or decret or registrate bond, stopped both personal and real execution till it was discussed; now it impedes not real execution, except it expressly bear it, which is not frequent. *Vide supra*, 22d February, 1671, numero 141.

V. I find, by an act of the town-council of Edinburgh, dated 23d February, 1591, all that have either given over their houses within burgh, or have been warned by chalking the doors, must flit within 14 days after the term of Whitsunday, &c. (now custom seems to extend it to 40 days;) after which they are said to be so closed within terms that the landlord is not obliged to accept of the keys, but may cause them pay the next term's maill; yet see Durie, 20th July, 1633, Brown *contra* Maxwells; and the violent profits for sitting within burghs is declared to be the double maill. See Stair's System, *Titulo*, *Of Tacks and Removings*, § .

VI. In a contract-matrimonial, the husband provides the tocher and a sum added to it to himself and wife in liferent, and to the heirs of the marriage in fee, and for his performance finds a cautioner. This cautioner being pursued, offers to fulfil to the relict: but for the heir, says he cannot, because as heir he is bound to relieve and warrant him against his cautionary for his father: and *quem de evictione tenet actio eundem agentem repellit exceptio; frustra petis quod mox es restitutus; et confusione tollitur obligatio*, being both debtor and creditor. If the provision had been made to bairns, it may be it would have made some difference. See this decided, *infra*, 23d November, 1677, *Kennoway*. *Vide supra*, February, 1674, *Dumfermling* and *Calender*, No. 445, and the cases there cited: particularly Dury, 27th January, 1630, *Turnbull*: and 22d February, 1656, *Lady Lanton contra Rollo*.

*Advocates' MS. No. 555, folio 279.*

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1677. February. ——— against THE EARL OF CAITHNESS.

*Eodem tempore*.—HE who assumed the title of Earl of Caithness, as nearest contingent in blood, was, by a proclamation, inhibited to take the said style, or the lieges to give it him, on this pretence, that both the estate, honour, and dignity, were resigned in the King's hands in the last Earl's time. And though some doubt of the resigning of honours, yet Sir George Lockhart thinks a man may, in prejudice of his heirs, resign the very title, and surrender and abandon it, *ad perpetuam remanentiam*, in the King's hands, which will extinguish it and consolidate it with the fountain of honour: for our feus are *feuda conditionata*, not the *feuda gentilitia ex pacto et providentia* mentioned in the feudal law, where a man could not resign or abandon the fee without the advice and consent *proximorum agnatorum*, and if he had done it, they had *jus retractus* within such a time; see Craig, *De Jure Protimeseas*. With us a man *in liege poustie* may prejudice his heirs, and give it

to strangers; unless it be in ward lands, in the alienation of more than the half whereof he must have the superior's consent, though not his kinsfolk's. And by this same rule, burghs royal have resigned their freedom and privilege in Parliament, and so expunged the rolls: though it seems their magistrates, commissioner, or other representative, hath less free administration of the town's freedom than a man hath of his own title; yet I have seen it done in Cromarty, Enstruther Wester, &c.

On the other hand, one may think it hard to hinder the nearest heir-mae to take the style, it having been originally given to that man and his heirs, and nothing should deprive him of this his birthright but a crime that taints the blood. And so this Lord Kenmuire being a cousin, and the nearest to the last Lord, took the title and place without so much as cognoscing himself to be the nearest contingent in blood, (which is sometimes done and makes no passive title,) and yet none quarrels him. It is true to serve and retour himself heir would bind all the debts on him; and it is a pity that the taking the style and place should not infer a gestion; it has been attempted; it would make fewer nobles; but the same behoved to extend also to gentlemen, and burgesses taking their father's style, or entering burghess by him.

They say Somervell of Drum minds to assume the title of Lord Somervell, as being the nearest. See Dury, ——— 1633, *Sir James Douglas of Mordington contra the Lord Oliphant. De refutatione feudi, vide Craig, p. 316.*

In September, 1677, Campbell of Glenurchie was created Earl of Caithness; and that gentleman, who is nearest in blood, has raised a reduction against him of his right to the said title. The nearest agnate's reason of reduction is, that Glenurquhy claims the title and dignity upon the last Earl's resignation in the King's hands. Now, the last Earl's right, by which he bruiked the estate, was not as served and retoured, but as singular successor who had bought in a comprising. Now the title of Earl neither was, nor could be, comprised; and so his resignation (though he was nearest in blood) could not convey this title; and the pursuer being served heir to a former Earl, he has the only right to the title. This is somewhat subtile.

*Advocates' MS. No. 559, folio 279.*

1677. *March.*

ANENT ROUPS OF ESTATES.

ABOUT the middle of March, 1677, I saw the form of the rouping of the estate of Bogie, both casual and real, done at Kirkcaldy, by virtue of a commission from the Lords of Session at the instance of the creditors, wherein Forret was made judge. It was measured by an hour-glass, and was set at 8000 merks, some 4000 merks below the former auction. Captain Crawford became tacksman to it.

See the Roup of Cunnochie on the 30th of July, 1678.

*Advocates' MS. No. 560, folio 280.*

1677. *May 8.* The MINISTER of PRESTONHAUCH *against* The HERITORS.

THE Bishop of Edinburgh, upon the representation of the minister of Prestonhauch, issued forth a commission to the ministers of that presbytery, to make a visi-