

ing the Town's debts, or if it has been inverted. See, anent this, many things scattered up and down in other collections beside me.

*Nota.*—The mortifications the Town sets apart for their ministers' stipends, are, *1mo*, The annuity, which commonly is roused at about 11,000 merks. *2do*, The rents paid for the seats in the church, roused at 3,600 merks. *3tio*, Their old kirk rents, being mortifications and ground annuals due to the chaplainries and altarages of St. Giles's collegiate church, amounting to 3000 merks. *4to*, The merk upon the tun of all goods imported into Leith, set at 3,400 merks, making in all little more than 20,000 merks. Whereas the Town, without ever having got a charge of horning, or being pursued, past memory of man, pays 27,000 merks *per annum* to their ministers.

Another complaint of the lawyers was, That the Town's collectors poynded their houses summarily, without suffering the 15 days of the charge to expire before the poynding, as the Act of Parliament 1669 requires.

The President declared, the Lords would hear no other points till that of the annuities was first determined.

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1678. November 20. SETON *against* ———.

Mr Alexander Seton, minister at Linlithgow, against ———. The Lords in this case found the same which they had decided formerly, That the allowance of a comprising was not absolutely necessary, but only in case of a competition, where it will give preference to the comprising allowed; but the debtor cannot object the want of it as a nullity. See Hope's *Min. Pract. c. 10*, and 25th July 1679.

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1678. November 30. JOHN MARISHALL *against* JAMES SCOT.

The Lords this day readvised the testimony of the witnesses adduced in John Marishall's cause against James Scot, and adhered to their former sentence, and found the contravention of the lawborrows fully proven; and that Scot's son was then *in familia* with his father, and was not merely making a visit to him. But, in respect Scot is not a freeholder, but only a feuar, they restricted the 1000 merks decerned for, to 500 merks, which is the only pains of contravening lawborrows imposed by the [act] 1593, c. 166.

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1678. December 3. ANENT MOVEABLES.

It was questioned, if, in a disposition of moveables, the words *utencils* and *domicils* comprehend habilyment of one's own body. And it was generally

thought these words will not comprehend them. *An caligæ veniunt nomine vestimentorum*, see Calvin's Lexicon, v. *Caligæ*. *Vol. I. Page 27.*

1678. *December 6.* CLACKMANNAN'S CREDITORS competing.

IN the competition between the creditors of Clackmannan, the Lords did not indeed decide it, but inclined to find, that their equal presenting of their signatures of confirmation of their base infeftments to the Exchequer on the same day that Alexander Miln presented his, did not bring them in *pari passu* with him, unless they had taken instruments upon their presenting thereof judicially: which difference seems very strange, and not to be required by 66th Act Parl. 1578, declaring, that the King and his compositors ought not to deny confirmation to any that seek it. Yet Hope, in his *Min. Pract. tit. 10, Of Appryings*, § 11, seems to require taking of instruments. But here they were so boasted and over-awed by the Duke of Lauderdale's presence, who owned Alexander Miln, that they durst scarce take instruments.

In 1673, in the case of Hugh Sinclair of Binny and his Creditors, the Lords found the presenting of a signature to the Exchequer equivalent to a charge given to another superior.

It was likewise sustained to Bruce of Powfouls, who was cautioner in a great many debts for Clackmannan, that he was infeft about the same time with Miln, and raised his summons for pointing the ground and maills and duties before the Lords, and executed them that same day that Miln obtained his decret before the Sheriff of Clackmannan. This diligence was sustained by the Lords to bring in Powfouls *pari passu* with Alexander Miln. *Vol. I. Page 27.*

1678. *December 7.* WESTGAIRTH and his FACTOR *against* MICHAEL SEATON.

WESTGAIRTH, an Englishman, and his factor, charge Michael Seaton in Burntisland. The Lords sustained compensation upon Westgairth's ticket of receipt of the potashes; albeit it was alleged that the price of them was not liquid, *nec constabat* what kind they were of, there being some potashes near the double rate better than others. Yet the Lords received it, because *de proximo poterat liquidari*, *L. ult. C. de Compensat.* And named Bailie John Hall, and Robert Douglass, soap-boiler in Leith, to depone what the cask or barrel of potashes at that time was worth; and declared they would modify accordingly: which is a very rational method in such cases, and they followed it in valuing the goods of the Calmer ship, &c. *Vol. I. Page 27.*

#### ANENT MINISTERS' STIPEND, payable furth of BARONIES.

I WAS at this time informed of a case that happened, in 1666, to be decided betwixt the Creditors of Balcomie, thus:—A minister has a decret of locality, appointing so much of his stipend to be paid furth of such a barony, it being