to erect them into deaconries; but allowed the Magistrates yearly to name visitors or overseers for every trade, to be accountable to them; and appoint the Trades to make the third part of the Town-Council, *viz.* seven;—the merchants, maltmen, and seamen, making the other two parts.

The Trades were craving more. *Vol. I. Page* 126.

1678 *and* 1681. WILLIAM VEITCH *against* PETER PALLAT and THOMAS WILSON.

1678. *July* 24.—IN an improbation, pursued by Peter Pallat and Thomas Wilson, his factor, against William Veitch, for producing a gift of one Sanderson's escheat, granted to David Rodger in the time of the English usurpation, when the back-bond and conditions of the gift were inserted in the body thereof:

It was ALLEGED,—1*st*, That, being *in publica custodia*, it needed not be produced; but only condescend upon the date. ANSWERED,—That brocard held only where the principal was left at the Register, but not where they got the principal; and the Register only keeped a copy, as in seasines, reversions, hornings, gifts of escheat, &c.

2*do*, ALLEGED,—That, in a former debate betwixt the parties, it was produced in process, and the Act bears so, which is *probatio probata*, so that it needs not to be produced now. ANSWERED,—*Nullo modo relevat* to stop certification, if it be not produced now; else it were easy to steal up a false paper, after production, and thereby shun the improving thereof.

Yet it was informed, that, in a case between *Grant of Ballindalloch* and *Grant of Dalvey*, this same allegeance was sustained and found sufficient to stop certification. See Stair, *22d January* 1662, *Earl of Marr*.

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1681. *January* 20.—Veitch and Pallat's case was advised, and Veitch preferred, because Pallat's papers, adduced by him *in modum probationis* to instruct Sanderson had a visible estate, and that the bond was for anterior furnished wine, were amissing. But, being afterwards found, the Lords, on a bill given in by Thomas Wilson, Pallat's factor, stopped all till they had fully advised the probation. *Vol. I. Page* 126.

1681. *January* 22. DRUMMOND of CARLOWIE *against* SIR JOHN DALRYMPLE and GEORGE YOUNG.

See the prior part of this case, Dict. page 15,645.

IN the cause, Sir John Dalrymple and George Young, his assignee, (16th Nov. 1680,) the Lords found,—in vicarage-teinds, such as calves, lambs, &c. where they are fewer than ten and above five, because a half lamb cannot be paid *salva rei substantia*, and without destruction of the animal,—that the value

of the half *succedit loco rei* as *surrogatum*, and is due. See the same decision, Haddington, 19*th Jan.* 1611, *Baillie.*

Sir G. Lockhart contended it was downright nonsense, and contrary to law, to decern for the value, where *ipsa corpora sine rei interitu* could not be paid, and that nothing was due in that case at all. *Vol. I. Page* 127.

See other reports of this case, Dictionary, page 15,275.

1680 *and* 1681. Sir JOHN MAITLAND and LADY CUNNINGHAM *against* LORD and LADY CARDROSS.

1680. *June* 8.—SIR William Sharp, keeper of the Signet, demurring to sign a caption at Mr John Maitland and Lady Margaret Cunningham's instance, against Lady Cardross, for exhibition of papers in her hands, because she was clothed with a husband; and this being represented by a bill, the Lords found that could not exeme her, the horning not being for payment of money, but prestation of a deed; the fact of exhibiting being prestable by herself, and in her power; (she having the writs in her husband's absence forth of the country;) and so ought not to decline to obey what is just; and her contempt, delay, and refusal against authority was *quasi maleficium.* In which cases execution may pass against wives. *Vide 7th July*, 1680. *Vol. I. Page* 101.

July 7.—In Mr John Maitland's action against Lord and Lady Cardross, (June 8, 1680,) the Lords found, where there were two heirs-portioners, the child or descendant of the eldest daughter ought to have the custody of the papers and writs, albeit the Lady Cardross was in the possession, and that we say *in pari causa potior est ratio possidentis;* and appointed her only to get transumpts of them; and reserved to them to debate upon the tailyie.

This is no more than what had been decided before, Dury, 17*th July* 1638, *Denholme.*

The Lords further ordained the expenses of the transumpts to be equally divided betwixt the parties, seeing they had equal interest. But as to the tailyied lands, preferred Cardross as to the writs thereof; he always freeing Lady Margaret, conform to the tailyie, of her father and brother's debts.

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July 17.—In Mr John Maitland's general declarator of liferent escheat against Lord Cardross, (21st January last,) Cardross replying *incidenter* on his summons of improbation, which he had depending against the executions of the horning whereupon his escheat was gifted; they DUPLIED, That the execution of the summons of improbation was null, because it bore, some of the defenders were personally apprehended, and some at their dwelling-place; that others were cited at the market-cross of Edinburgh, and pier and shore of Leith, as being out of the kingdom; and was not special in naming and designing who were cited personally, and who at their dwelling-house, &c.; which precludes him from all means of improving the same.

ANSWERED,—It was sufficient to condescend immediately.

This being reported on the 23d July, the Lords found the execution null, and their amending of it, or giving in a formal execution under the messen-