so this being a conveyance and disposal of his haill executry, there was no place for her legitim, but she must be content with the 2000 merks.

ANSWERED,---The disposition reserving the father's liferent, and being only to take effect after his death, it could not prejudge her legitim : and she might repudiate the provision given, or crave it to be made up *per quærelam inofficiosi et supplementum legitimæ.*

REPLIED,---All lawyers agree that a father may not prejudge his bairns of their legitim by testament, legacy, or *donatio mortis causa*, nor any other deed on deathbed, because then exposed to the insinuations of flatteries or threats : but where he settles his estate *inter vivos* and in *liege poustie*, and declares it to be in satisfaction of their legitim, the same is obligatory, and cuts off the legitim, though it be not to take effect till after his death ; seeing he is *dominus et arbiter rei suæ*, and knows best how to distribute his estate among his children ; as was found in the case of *Thomas Wylie* and his bairns : even as much as when he takes a bond to himself in liferent, and to such a child *nominatim* in fee, that substitution will cut off and exclude the legitim, and the other bairns can have no share of that sum.

All agreed that, by no testamentary or deathbed conveyance, he could prejudge the legitim : but some of the Lords thought, that, notwithstanding of the bonds of provision, or dispositions *inter vivos*, if they retained either the liferent or a faculty to revoke and alter, the children, in their option, might either accept, or repudiate and claim their legitim ; but that, if they did transmit it to strangers, or make absolute rights to their children, these would subsist. The point seeming of importance, and to derogate from the paternal power, the Lords ordained the case to be argued in their own presence.

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1700. *February* 7 *and* 20. LORD BOYLE and SIR ADAM GORDON of DALPHOLLY *against* POLLOCK of that ilk and LAWRENCE CRAWFORD of JORDONHILL.

February 7.—I REPORTED David Lord Boyle and Sir Adam Gordon of Dalpholly against Pollock of that ilk and Laurence Crawford of Jordonhill. Kelburn, now Lord Boyle, and Dalpholly having got a tack from the Exchequer of the additional excise on liquors imposed by the Parliament 1693, they gave a subtack of it, in so far as concerned the town of Glasgow, to James Crawford, for £19,000 of tack-duty, for whom Pollock and Jordonhill became cautioners. The sub-tacksman being dead, and about £200 sterling of the tack-duty yet resting, the two principal tacksmen charge the cautioners ; who suspend on this reason, That, beside the excise of ale, there is likewise set to them a duty of two shillings Scots upon every pint of strong waters, whether brewen of malt or not, excepting only what is made of wine ; and subsume that a great quantity of brandy or rum was made, within the time of their tack, of the molosses of the sugar manufactory in Glasgow ; and whereof they having craved the excise-duty, the owners of the manufactory suspended before the Exchequer, and were declared free on this ground, That the manufactory had a privilege and exemption prior to the imposition of this additional excise, and so was neither derogated from nor taken away by the Act 1693 ; so that a considerable branch of the sub-tacks-

man's profit being cut of by this decreet, his cautioners must have allowance and abatement of the remaining tack-duty effeiring to their loss.

ANSWERED for the principal tacksmen, chargers,—That they oppone the tack, whereby they subset no more than what they had right to themselves; and either the duty of this molosses brandy was comprehended in their tack, or not: if not, then the sub-tacksmen had no right to it; if it was contained therein, they cannot be liable for the eviction; because it neither arises from any fact or deed of the setters, nor from any defect of their right, but from an interlocutor of the Exchequer, assoilyieing them; against which they cannot be obliged to warrant their sub-tacksman, there being no fault either in themselves or in their right.

REPLIED,---By the subtack it is evidently set to them; for they have right to the excise of all liquors, whether made of malt or not, providing it be not composed of wine, which exception confirms the rule in all other cases; and it is as plain as words can make it, that rum is neither made of malt nor wine, but of molosses, and so necessarily falls under the tack. And it may be remembered that lately George Mackenzie got abatement against Sir Thomas Kennedy on account of the diminution and failing of the brewing by the supervenient law. And what if a tenant's roum were inundated or wholly overblown with sand? this total sterility would liberate from the tack-duty; and the Lords gave a *remissio canonis* on account of the vastation by the English invasion in 1650, as Dirleton observes, *20th November* 1667, *Tacksmen of the Customs* against *Greenhead.* Yet the law says, *Si universitas corporis vendita sit per aversionem*, such as a whole flock, *ob res particulares evictas agi non potest.*

The Lords doubted much of this case, whether any abatement could be pled or not. Some thought the decreet of Exchequer, though a sovereign court, was not *res judicata*, that being mainly applicable to the judicatories deciding property: Others said this decreet was *res inter alios acta quoad* the cautioners; and it was queried if the principal tacksmen could have an ease on account that this rum was exemed; and if they could not, why should their sub-tacksmen have it, unless they had profit on other parts and subjects of their tack through the rest of the kingdom. The Lords resolved to hear the case in their own presence.

February 20.—The Lords having heard this cause, they repelled the reasons of suspension, and found no abatement due.

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1700. *February* 16. JAMES MILLER *against* ROBERT RAINY.

The Lords advised the probation betwixt James Miller, writer, and Robert Rainy in Falkirk. Helen Mathison, aunt to Miller, dispones her estate to him, reserving her own liferent and the nomination of sundry legacies, and a power to her to alter, in case her urgent and absolute necessities should require the same allenarly. After this she gives a new disposition to Rainy, narrating that she was redacted to straits, and that Miller had proven ungrateful to her; who, after her decease, raises a reduction of the first disposition made to Miller.

The Lords, before answer, allowed a conjunct probation of her condition at