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

her death, if she was truly in straits, and of the said Miller his miscarriage to her, or if she was only, through misrepresentations, irritated against him. And the probation being advised, little appeared of her being reduced to urgent necessity, but, on the contrary, that she had money lying beside her at the time of her death: But it was proven that Miller had served inhibition against her on his disposition, and raised arrestment on sundry of her effects. And it was contended for Rainy, that she was the best judge of her own necessities; and having asserted it under her hand, it was a sufficient ground of revocation: Likeas, he had forfeited her favour by straitening her with the foresaid scandalous and indiscreet diligences of inhibition and arrestment.

ANSWERED,—Her assertion, elicited from her by calumnies, can be no probation; and *Mrs Mary Mauld* having disponed her portion to *Mr James Carnegy of Phineven*, her cousin, with a reservation of liferent, and a power of disposal on it in case of necessity, and having made a posterior right of it to the *Earl of Panmuir*, the Lords, in 1678, preferred Phineven, and found she could not *ad libitum* revoke it. And *l. ult. C. de Revoc. Donat.* lays down the solid grounds on which such donations may be retracted upon atrocious injuries; but the using diligence against the donant is none of them: and what he did was from no disrespect to his aunt, but to prevent her being imposed on, and to secure his own right.

The Lords reduced the first disposition given to Miller. Against which he reclaimed by a petition; which the Lords declared they would farther consider, how far ingratitude with us may be a relevant reason of reduction of a gratuitous right. *Vol. II. Page* 90.

1700. *February* 20. MARJORY FORBES, Lady Drum, *against* ROBERT KEITH of LENTUSH.

MR Robert Keith of Lentush having proposed a marriage betwixt the late Alexander Irving of Drum, and Marjory Forbes, daughter to Auchreidy; and for the more secrecy, and as Drum was fickle and changeable, he, in 1688, supplies the place of a minister, and celebrates the marriage himself; but, to secure him against all damage, (as he foresaw that he would lose his place as one of the Regents of the College of Aberdeen, as actually he did,) he took a bond from her, the day before the marriage, for £10,000 Scots. The said Marjory, now Lady Dowager of Drum, raises a reduction of that bond on thir three reasons, 1*mo*, That, by ocular inspection, the bond has been originally blank, not only in the creditor's name, (wherein Sir Alexander Forbes of Tolquhon is now filled up for Lentush's behoof,) but even in the sum, term of payment and penalty, and is filled up with a different hand and other ink; and therefore, being after the Act of Parliament 1681, it is null, not mentioning who filled up these blanks; neither is it sufficient that the writer of the body of the bond is named, seeing these substantial parts of the bond are visibly writ by another hand; and therefore, not being filled up at the date of the subscribing, it must be presumed to have been blank at her marriage, (which was that very next day,) and could not be filled up then, being *vestita viro*, and capable to grant no bond. See the like presumption sustained by the Lords, *15th January* 1670, *Lady Lucia Hamilton*