cember 1789; and, on the 2d March 1790, they "refused a reclaiming petition."

Act. H. Erskine. *Alt.* Allan M'Conochie.

Diss. Alva, Eskgrove, Stonefield, Hailes, Henderland.

N. B. The alteration, 11th February 1790, was occasioned by the absence of Lord Justice-Clerk through indisposition. From a like cause, Hailes was absent 2d March 1790, though it is probable that he would have concurred in refusing the petition, as the last interlocutor seemed most consonant to principles.

1790. *February* 24. The CORPORATION of SHOEMAKERS of PERTH *against* ELIZABETH M'MARTIN and DANIEL CAMERON.

BURGH ROYAL.

The daughter of a soldier found not entitled to authorise her husband to carry on a trade within burgh.

[*Fac. Coll. X.* 232; *Dict.* 2014.]

HAILES. The defenders' counsel makes the most of what I must consider as an untenable plea. I am not quite satisfied that the statute in question was meant to be extended to Scotland; but I am satisfied that the legislature had chiefly in view the *companies* in London, and other great cities in England. The statute could not mean to consider what trades women were apt and able to exercise in every little burgh throughout the kingdom, or to suppose that they were apt and able to exercise every one of them. It is enough that they might have qualifications fitted for the exercise of some one or other of them; for example, brewers. Our old laws are full of female brewers. In ancient times all baking was performed by women; and we learn from Thucydides, that at Platea, during the siege, there were 200 she-bakers. Women may be habit-makers; and they have, with much success, practised the business of apothecaries and druggists. The office of vintners is exercised by women, notwithstanding an old Act of Parliament to the contrary. I suppose that women are capable of being fishmongers; for, in some countries they have occasionally practised the trade of legislation. They may be weavers of lace; and there is nothing to prevent them from being weavers of linen. Women have been good artists in that branch. Because an old preamble is prefixed to a new statute, the defenders conclude that the new statute must be interpreted by the old preamble. If a soldier may exercise by others any trade which others are apt to exercise for him, any man of quality, who ever served in the army, may, by journeymen and apprentices, take all unfreemen, tailors, weavers, &c. under his protection. In the county of Lanark alone there are half-pay officers enough

to set up at Glasgow, and put an end to all the privileges of the trades there. Much is said of the odiousness of corporations. They are not odious in their origin and nature, but in consequence of their by-laws and by-drinks. In themselves, as religious and political societies, they are useful; and it is the abuse alone which we ought to complain of. At any rate, it is plain that the legislature meant to take an exclusive right from one set of persons, and communicate it to another; and therefore I cannot presume that it meant to take away more than it expressed. The statute, as interpreted by the defenders, ought to have been entitled "an act for the more speedy and effectual marrying of soldiers' widows." The fancy of making a husband journeyman under his wife is ingenious.

On the 24th February 1790, "The Lords found that Daniel Cameron, husband of Elizabeth M'Martin, had incroached upon the privileges of the shoemaker trade of Perth;" adhering to the interlocutor of Lord Justice-Clerk.

Act. J. Drummond. *Alt.* H. Erskine.

[Detained by indisposition from the Court, 27th February, 11th March.]

1790. *May* 26. JAMES GRIEVE *against* MALCOLM M'FARLAN.

LOCUS PŒNITENTIÆ—WRIT.

The acknowledgment of subscription not sufficient to supply the want of any of the statutory solemnities of deeds.

[*Fac. Coll. X.* 45; *Dict.* 8459.]

DREGHORN. Had parties contracted on the faith of a *series rerum judicatarum,* I should have hesitated; but the reverse is the case here,—so no plea of *bona fides.* The object of our law is to guard against forgery, not to secure deliberation; for the writing itself implies deliberation. There is no *locus pœnitentiæ* in holograph writings: how can such a writing bear more faith than an acknowledgment of a man having granted the obligation? Hence, after 20 years, a holograph writing, although become prescribed, may have its subscription proved by oath of party. See the decision in Bruce, *Major Arnot.* [His exordium and conclusion did not agree.]

PRESIDENT. The learned author of the Dictionary had formed to himself a particular notion as to the Act 1681, and this has infected his reports of decisions on that act. The case in Bruce is misunderstood. Bruce speaks not of *subscription* but of the *whole writing;* and there is a decision in Edgar to the same purpose. If you allow of acknowledgment of subscription in informal writings, you make *informal* more probative than holograph writings.

ESKGROVE. There is great force in the former decisions. The Act 1681 principally respected forgeries: it does not exclude a proof by oath of party in