

*L. 19. D. de R. Juris unusquisque debet scire conditionem ejus, &c. See 6th December, 1609, Cunyghame and Home. See Balfour's Collection of Practiques, Tit. 19 of Payment, in principio, folio 34. Reo majestatis non recte solvit debitor, L. 6. C. ad L. 3. majestatis; L. 41. et seq. D. de solutionibus. See Hope, Tit. of treason, folio mihi 246; see Craig, page 86, No. 446 and 479; Connanus, libro 5. Commentariorum capite ultimo.*

*Advocates' MS. No. 122, folio 88.*

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1671. *February 2.* THOMAS WATSONE, Merchant in Edinburgh, *against* JOHNSTONES of Coreheid.

IN this cause it was debated, whether a prorogation granted to a principal debtor will be profitable to a cautioner; and if such a prorogation will infer a novation so as simply to liberate the cautioner; and if a novation of the sum contained in a former bond may be also made use of by the cautioner in the same, though it seems not to be introduced in the cautioner's favours. *See Mascardus conclus. 1113. Vide etiam, Schotanum de constitut. Principum, page 28, de Rescriptis moratoriis made in favours of the principal, but not of the cautioner. Vide Notas D. van Tien super eo loco ibique Freundergerbium.*

*Advocates' MS. No. 123, folio 89.*

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1671. *February 1.* LORD DUMFERMLING *against* the VASSALS of that Lordship.

HE having given in a bill to the Exchequer, desiring they might not enter any of the vassals of that Lordship, but that they might all pass by him, as having a three nineteen years tack of the whole casualties, obventions, and feu farms thereof; at least that they would enter none till they produced a certificate, under his hand, that he was satisfied anent their composition.

It was ALLEGED for the vassals, That the Earl's right was null, because of the law long tacks, such as this was, are equivalent to an alienation; and all alienations of the King's annexed property, and proper patrimony of the crown, are discharged by many acts of Parliament; but *ita est* the lordship and abbacy of Dumfermling is of the property annexed to the crown, though not by the general act 1587, yet by a posterior act in 1593 it is specially annexed, and it must also be supposed to be comprehended in the act of annexation 1633. *2do*, The tack being granted in 1641, and his Majesty considering that many things had escaped both his own and his royal father's hands, during the time of these confusions, he has, in 1661, revoked all deeds done by him then: and though by a particular act in 1661 this tack be excepted from his Majesty's revocation, yet it must fall under the same, because, *1mo*, The act *salvo*, according to its explication in 1633, reserves all parties interests as they were before the making of these

ratifications. *2do*, The explanation of the tack whereon my Lord Dumfermling lays the greatest stress is not ratified at all, and so it is undoubtedly revoked.

It was ANSWERED, to the first, that if the lordship of Dumfermling were indeed of the annexed property, the feuars and vassals would be so strongly founded on law, reason, and acts of Parliament, that it would not be easy to return them a solid answer; but that their case was nothing such: for that lordship belonged not to the King *jure publico seu coronæ*, but *jure privato proprio et jure successionis* as heir served and retoured to his mother, Queen Anne, in 1629, to whom it was disposed by King James, at Upslo, (upon Abbot Pitcairne's resignation in his hands) *per morganiticam*, and in a morning gift; which irredeemable disposition is confirmed in the same Parliament, wherein, through mistake, it is forsooth annexed to the crown, viz. in 1593; and she was thereupon infeft by charter and seasine, which are yet extant to show. Now, it falling to the King as heir, and being private patrimony, what power a baron or gentleman has, the King must have the same in disposing of it, setting it in tacks or otherways at his pleasure, *ita Craigijs*, page 110. And it is expressly so ratified by the Parliament, 1612, *Act. 10.*

REPLIED, That the infeftment given to Queen Anne was undoubtedly a null infeftment; and if it had been quarrelled it could never have been sustained: and it having been produced and proponed on in the process pursued at the instance of my Lord Secretary, as Lord of the regality of Musselburgh, (which of old was a part of the Abbacy of Dumfermling,) against the feuars of Cousland, it was not found a valid right whereupon to defend: and whatever was in that the said lordship recurring to King Charles, as heir to his mother, it became again of its own nature, and returned to be of the patrimony of the crown, and so is to be understood in the annexation of the superiorities of kirklands, made 1633.

THIS went to interlocutor; and they FOUND the lordship of Dumfermling was truly of the annexed property: but they waved it, and would not give forth their answer to his bill, whereupon I hear he has made new addresses to his Majesty.

*Advocates' MS. No. 124, folio 89.*

1671. *February 13.*

Anent a POSTSCRIPT to a LETTER.

THE Lords found a postscript of a letter as obligatory as if it were engrossed within the body of the letter, though it be not subscribed, providing the party make faith the postscript is also his hand writ.

*Advocates' MS. No. 125, folio 89.*