in desuetude. All the arguments against its validity are merely arguments *ab incommodo*. The wisdom of the statute is this, that it does not restrain gaming, but only prevents the excess, and disappoints the harpies who would otherwise prey on the young and unwary. There is no great harm although the law were put in execution as to public-houses. If inn-keepers were deprived of the privilege of the burgh when they offended, it would give me no pain. I cannot distinguish between this question and a horse-race. It is a mistake to suppose that a horse-race is always run on level ground. The course at Penrith is on the side of a hill. If the law were to be so interpreted, men would have nothing more to do than to use the highway instead of a course. *First at the hare* is a trial of skill. But suppose it a race, I should think that he who ventures more than 100 merks on such a wager, acts injudiciously, and must stand to the consequences.

On the 16th December 1774, "the Lords sustained the title of the Kirk-session;" adhering to their interlocutor of the 14th July 1774.

Act. A. Wight. *Alt.* A. Crosbie.

1774. *December* 24. ARMSTRONG *against* His CREDITORS.

CESSIO BONORUM.

IN this case the pursuer of the *cessio bonorum* made oath that he had not *cancelled* any writings, but he omitted to say that he had not *put any writings away*. The Lords found that the oath was incomplete, and refused to set him at liberty, although there was no opposition made by the creditors. It was said that the modern practice of paying creditors by a *cessio* ought not to be favoured beyond the letter of the law; and that a man, making such an oath, might put away writings, and so defraud his creditors: That if he had sworn that he had not *put away*, it might be concluded that he had not *cancelled* any writings; but not *vice versa*.

For Petitioner, D. Armstrong.

1775. *January* 17. GEORGE HAY *against* JAMES HAY.

PASSIVE TITLE.

Found that a person passing by his father, who was three years in possession, as apparent heir, and also passing by his grandfather;—the person last infeft base, and making up titles to a remoter predecessor, who was the last publicly infeft in the lands, is liable for the debts contracted by his father upon the statute 1695.

[*Folio Dict., VII.* 4; *Dictionary*, 9755.]

COALSTON. The words of the statute are *remoter predecessor*: the defender

therefore falls under the words of the statute. He has taken something by the service, namely the superiority which was in Agnes Binnie. I would not, at any rate, allow him to take advantage of literal criticisms, in order to disappoint the creditors of his father.

KAIMES. If he takes any thing by the service, he will be liable in so far. With regard to property, the infeftment is nothing.

GARDENSTON. The words of the statute are quite general, though Lord Bankton has limited them in his commentary, erroneously, as I think.

PRESIDENT. How can the defender object to his own title? He does not seek to reduce it. Were he insisting in a removing against tenants, the title would be good: he cannot therefore be allowed to plead that the title is null as to creditors.

On the 17th January 1775, The Lords found the defender liable; adhering to Lord Kennet's interlocutor.

Act. ———. *Alt.* A. Wight.

1775. *January* 18. JAMES WILSON *against* JAMES JACKSON.

USURY.

How and before what Court competent to be tried: If triable without a jury, and at the instance of the procurator-fiscal alone, in case the private party disclaims the process.

[*Faculty Collection, VII.* 14; *Dictionary,* 16,433.]

GARDENSTON. If such petty usuries might not be tried by the Sheriff, it would be a great encouragement to such practices, which are but too common already among the lower classes of people. As to trials by jury, I fairly own that I am none of those who can join in the cry of John Bull about juries, who thinks that his country alone is free because it has juries. In England it is the judge who directs the jury whenever they go right. I admire juries in cases of treason, and in revenue causes; for we have seen from history that bad effects arise from the want of them.

COALSTON. As to the first point, I am of the opinion given; the more especially by reason of the decision, *26th June* 1766, *Mackechnie* against *Wallace.* As to the second, I do not like juries in civil causes, but I have ever been of opinion that it is a great and important privilege,—that of being tried by a jury in matters criminal. I am sorry to see that the line has not been well drawn of late between causes to be tried with or without a jury. I think, that in cases only inferring fine and imprisonment, or smaller punishment, there is no necessity for a jury.

PRESIDENT. I am sorry to see that the practice of exacting above the legal interest of money prevails in Paisley. The former case, in 1766, came from