AUCHINLECK. If action for *mislabouring* is reserved, we ought, in the meantime, to find expenses due by the master for *mispleading*.

KAIMES. A tenant cannot plough up old grass reserved for the cattle of the farm. But I doubt whether this meadow can come under the denomination of old grass; but, let that be as it will, in common law a bargain is a bargain. Here the tenant was at will, and had liberty to plough: it is impossible that the master could turn him out directly.

On the 26th November 1776, "The Lords assoilyied the tenant;" adhering to Lord Elliock's interlocutor.

On the 26th January 1777, "The Lords altered."

Act. Ilay Campbell. *Alt.* B. W. M'Leod.

Diss. Gardenston, Kennet, Alva. *Diss.* at second hearing, Elliock, Stonefield, Hailes.

Non liquet, Covington.

1776. *November 27.* JAMES and GEORGE LESLIES *against* Mr GEORGE ABERCROMBIE.

HUSBAND AND WIFE.

A minister's bond to the widow's fund and his arrears of taxes not deducted from the goods in communion in an accounting with his wife's nearest kin.

[*Faculty Collection, VII. p.* 304; *Dict., App. I., Husb. and Wife, No.* 3.]

MONBODDO. From the nature and constitution of the debt, the bond did not bear interest to the wife or to her husband; and therefore I would adhere.

COVINGTON. If the petitioner, Mr Abercrombie, prevails, he cuts down the branch on which he stands; for he has taken one part of the debt, *jure mariti*. How can he hold that part, if he will not allow the *jus relictæ* to take place as to the other?

KAIMES. Here is a conditional debt, which therefore would fall to the husband's heir, and yet it does not fall under the *jus mariti*. This is singular, yet still I think the interlocutor right.

GARDENSTON. As to the general point, the Ordinary has found, upon clear principles, that what was vested in the son fell to the father, that is, *corpora mobilium*, but he has not found so as to *nomina debitorum*. Perhaps this may be disputed. The Court has gone so far as to find that possession is sufficient; that confirmation, even of the smallest particle, is sufficient to give a title. Why not find so as to the possession of bonds and bills?

HAILES. Why not go one step farther, and abolish the jurisdiction of commissaries in the matter of confirmation?

COVINGTON. The Court has gone far enough already: The farthest was in the case of *Pringle* and *Veitch;* but there the nearest in kin was himself the

debtor to the defunct; and the Court thought it unnecessary, and indeed anomalous, to oblige a debtor to take decreet against himself.

MONBODDO. If possession is held equivalent to confirmation as to *nomina debitorum*, there is an end put to confirmation; for there is nothing easier than for a nearest in kin to take possession, *brevi manu*, of the bills and bonds of the defunct.

KAIMES. It is necessary that there be an *aditio hæreditatis;* that the heir may not be overtaken, or understood to mean to be heir, when he did not. Confirmation is *aditio hæreditatis in mobilibus*. When any one article, however insignificant, is confirmed, it is enough; because such confirmation shows the *animus* of representing.

On the 27th November 1776, "The Lords found that the bills and bonds of the mother did not vest *ipso jure* in the son, and do not belong to the defender, as his son's legal successor; that the sum of L.250, payable at the death of Elizabeth Chalmers, falls to be added to the goods in communion; that the bond for L.30, payable to the widow's fund, is no burden on the goods in communion; and that the window-light duties are not to be deduced from the goods in communion; the pursuers always finding caution to indemnify the defender, if these duties shall be exacted;" adhering to Lord Covington's interlocutor.

Act. R. M'Queen. *Alt.* A. Crosbie.

1776. *December* 4. PROCURATOR-FISCAL of the LYON COURT *against* WILLIAM MURRAY of Touchadam.

JURISDICTION OF THE LYON COURT—FEES OF MATRICULATION.

[*Faculty Collection, VII.* 36; *Supp. V.* 490, *Dictionary*, 7656.]

GARDENSTON. As this is an action for recovering penalties, it is necessary that the offence be proved. Mr Murray pleads, on the one side, that the records have not been regularly kept, so that it cannot be said that he is not matriculated; and, on the other side, that he and his predecessors have possessed for ages. Immemorial use establishes right in matters of more consequence than the present subject of debate.

ALVA. In cases of this kind old possession must imply a right. Of this right we have the best evidence that the nature of the thing can admit of.

PRESIDENT. I am no favourer of the jurisdictions which may tend to oppress the subjects. *Here* Mr Murray's plate, equipage, &c., are forfeited, because he had borne arms which his predecessors have borne for 300 years. The Act 1672 is calculated against the usurpers of arms, and it declares that arms once matriculated must not be changed, but must remain the rule of bearings for ever. But I deny that the not being matriculated in the Lyon register implies