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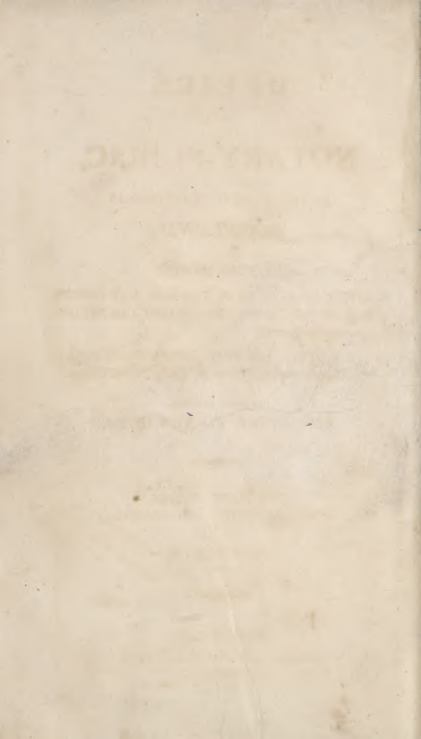
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THE
OFFICE
OF A
NOTARY-PUBLIC,

AS THE SAME IS PRACTISED IN
SCOTLAND;

IN TWO PARTS:

- I. GIVING AN ACCOUNT OF THE RISE AND INSTITUTION OF THE OFFICE, AND ANCIENT AND PRESENT STATE THEREOF.
- II. CONTAINING NOTORIAL INSTRUMENTS OF ALL KINDS, WITH THE FORMS OF EXECUTING THEM.

TO WHICH IS ADDED,
AN ADVICE TO NOTARIES.

THE FIFTH EDITION,
CAREFULLY REVISED AND CORRECTED;
WITH AN
APPENDIX.

EDINBURGH:
PRINTED FOR BELL & BRADFUTE.

1811.

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OF THE DIFFERENT KINDS OF NOTARIES, AND OF
THEIR ANCIENT AND PRESENT STATE IN SCOT-
LAND.

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THE
OFFICE
OF A
NOTARY-PUBLIC, &c.

PART I.

A SHORT ACCOUNT OF THE DIFFERENT KINDS OF
NOTARIES, AND OF THEIR ANCIENT AND PRE-
SENT STATE IN SCOTLAND.

TITLE I.

OF THE DIFFERENT KINDS OF NOTARIES, AND BY
WHOM CREATED.

THIS employment of NOTARY is derived from the Romans, among whom there was a body of Notaries, re-
acted into a school or college, and governed by a
superior officer, called *Primicerius Notariorum*, which
signifies *primus*, or *in prima cera scriptus*; for, before
the finding out of paper, the ancients wrote upon
waxen tables; from whence comes the way of speak-
ing, in the Roman authors, *in prima et secunda cera*,
in ima cera, as in Sueton, in the life of Julius Cæsar,
p. 86. Wherefore *Primicerius*, in any office, was the
master or chief; as, *Primicerius clarissimorum Tribu-*
norum Notariorum, the emperor's principal secretary;
Primicerius sacri cubiculi, the lord high chamberlain;

Primicerius Præfactorum pratorio, the captain of the guards; *Primicerius Fabricæ*, the surveyor-general, &c.

From Cujacius, *vol. iii, ad l. 15, Cod. de Decurion*, we learn, that there was a certain number of tabellions, and that they were subject to the *Primicerius*; and that none were admitted into the body but such as were of good fame, skilful in the laws, and in speaking and writing; and that this was determined by the opinion of the college of tabellions.

The tabellions were employed about the agreements and bargains of private persons. They formed public instruments concerning them, whereby these writings became probative, and got effect in law, doing every thing as do at this day our Public Notaries, who make a note of what is done in affairs to which they are called, and form instruments thereon, which, when extended, they insert in their protocol; *Tiraquel. de jure constit. possessorii, part. iii, limit. 30, n. 32, 33, 34, 35, 36; et arg. l. 2, Cod. Theod. et l. 3, cod. de Decurion.*

Besides these there were the *tabularii*, so called *a tabulis*, waxen tables. The office of the *tabularii* was to get from the debtors of the fisk obligations for paying the debts due to the public, and to make a record of them; as also, to state and balance the accounts of the effects belonging to the fisk, or to great cities. They were the same with our accountants; as the *distoleæ* were like our comptrollers of accounts.

The *scribæ* were appointed to dress and form the acts and judicial proceedings of the higher judges, and were called *scriptores notariorum libellenses*; whose office now, at this time, is to make up the acts of court, to write the testimonies of witnesses, allegations of parties, the orders, sentences, and decrees of the judges, and whom we call *clerks of court*. Besides these, there were other officers known in the Roman law by the name of *botbi*, *logistæ*, and *medogrammatei*, all employed in writing the fiscal affairs, in forming

and calculating the public accounts; and were public slaves, and servants to the commonwealth.

But the tabellions were freemen, and not bond-slaves, as were the *tabularii*, *scribae*, &c. until Arcadius and Honorius, A. D. 403, forbid, under severe penalties, any slaves to take upon them the office of tabulary or scribe, &c., which none but freemen were afterwards to exercise; l. 3, *Cod. de Tabul.*

There was another public servant called *tabellarius*, who carried from place to place, as he was directed, these *tabulae*, or public writings, instruments, accounts, or judicial acts.

In after ages, when people were not so nice in the language, these words *tabularii*, *scribae*, *tabelliones*, and *tabellarii*, were promiscuously used to signify the same officer and minister of justice, such as we now call a Notary; *Pract. judic. Ioan. de Arnono, cap. 3, n. 1, Qui secundum*, &c.; because they were in ancient times every one of them concerned some way or other about the same kind of instruments or writings. *Quæ persona in usu juris Tabularii aut Tabelliones appellantur, nunc vulgo Notarios vocant; Vinn. partit. juris, l. 4, cap. 27, de fide instrumentorum*: and in our acts of parliament, we use the words *Notar* and *Tabellion* conjunctively; act. 31, parl. 1469.

Protonotarius, or *primus notarius*, among the English, is a chief officer or clerk of the common pleas and king's bench; and for the first-named court there are three protonotaries, and the other hath but one. He of the king's bench records all actions civil, as the clerk of the crown-office doth all criminal causes in that court. Those of the common pleas, since the order 14 Jac. I, upon an agreement entered into between the protonotaries and filacers of that court, do enter and inrol all manner of declarations, pleadings, assizes, judgments, and actions. They make out all judicial writs, except writs of *Habeas corpus* and *Distringas jurator*; (for which there is a particular office erected, called the *Habeas corpora of-*

fice) : also of execution and of seisin, of privilege for removing causes from inferior courts, writs of *Procedendo*, of *Scire facias* in all cases, and writs to inquire of damages, and all processes upon prohibitions, on writs of *Auditu querela*, false judgment, &c. They likewise enter recognizances, acknowledged in that court, and all common recoveries, and make exemplifications of records, &c. ; 5 Hen. IV, *cap.* 14.

The power of making Notaries appertains to the sovereign prince, or to whom he gives a commission for that effect ; so that a judge, or any other magistrate in the state, without a special commission, cannot create a Notary ; which lawyers call *actus summi imperii*, and recount *inter regalia* : for, as the judge hath from the sovereign the ordinary jurisdiction or power of judging, so the Notary obtains a license to write instruments whereunto full faith is given ; *Wessenebec. ad tit. ff. de fide instrum. n.* 3 ; and thus becomes a public person ; *Tiraquel. de jure constit. possess. part. iii, limit. 30, n.* 27 ; and is, therefore, called Notary-public : and *Rob. Maranta spec. aureum. part. iv, distinct. 18, n.* 3 ; and *Tiraquel. de jure constituti possess. part. iii, limit. 30, n.* 28, call him *judex chartularius*, a chartularly judge, exercising voluntary jurisdiction, *i. e.* being required by the good will of parties ; for he can do nothing of his own accord against any unwilling to employ him ; and he may perform his duty at any time, by night or by day, in every place.

The emperor of Germany, through his right to the seat of the Roman emperors, and to the states of Italy, and by his title of emperor, pretends a succession to all that ever belonged to the ancient emperors of Rome ; that is, to all the countries that were ever subjected to the Roman empire ; and thereupon pleads, that the Notaries created by him, who are called *Imperial Notaries*, may exercise their office within any kingdom in Europe, though now governed by an independent sovereign of its own.

The pope of Rome, in like manner, ambitious of

temporal and worldly dignity, in imitation of the Roman emperor, pleads for an universal jurisdiction, not only over all Europe, but also over the whole universe; and though, at first, the popes claimed only a spiritual power, yet nevertheless, when occasion offers, they direct their aim to a temporal sovereignty; and too often they have succeeded in their design, to the great desolation and utter extinction of many princely families. Upon this foundation of an universal jurisdiction, the pope pleads, as well as the emperor, a power to create universal Notaries, ecclesiastical persons called *apostolical Notaries*, who exercise their office, both in spirituals and temporals, over all Europe, and exclude the imperial Notaries, who are only laics, from meddling in spiritual affairs.

There is a third kind, called *Regal Notaries*, created by the several kings and sovereigns, with power to practise within the kingdom and territory of the prince who gave that commission; and these Notaries, being laic persons, durst not, in time of popery, under pain of excommunication, meddle in ecclesiastical matters, which were made peculiar to the spiritual Notaries.

But as to the diocesan Notaries, (whose title was thus,—*Ego P. G. Notarius Publicus, clericus dioceseos Glasguensis, &c.*; i. e. I P. G., Notary-public, one of the clerks of the diocese of Glasgow, &c.), I know not if they might practise without their own diocese; for though the spiritual character and power to teach and administer the sacraments was universal, I know not if that of Notary was so too. However, as they were not allowed to preach in an extraneous diocese, without the permission of the bishop of it, it may be thought, that, without his license, they could not, within that diocese, take up, form, and extend notorial instruments, concerning affairs pertaining to persons living therein.

TITLE II.

OF THE INDICTION.

THE indiction, before the reformation, was an essential part of a formal instrument ; for, according to the canon law, the omitting of it will vitiate the instrument ; wherefore it was thought not foreign to our present purpose, seeing it was formerly used in Scotland, to give this short account of it.

Indiction signifies the space of fifteen years, at the end of which a new indiction begins. Formerly it signified the admonition given to the subjects, to prepare themselves for payment of the tribute, before the collections were exacted ; *l. ult. Cod. de indict. et arg. l. 10 ; Cod. de muneribus patrimon.*

Indiction cannot be made but by him to whom it is competent, either by law or the right of empire ; *l. un. Cod. de superindict.* The indiction was likewise put on every lustre, or five years, for gold, silver, and iron. Indiction is called by Cicero what is collected, *collation, symbols, spenses*, vulgarly *tax*, like to a poll. Cassiodorus mentions first, second, and third. Some were canonical, and made according to the law ; others extraordinary, decreed by the magistrates for any unseen occasion ; *l. 1, Cod. de indict.*

Dionysius, a certain Roman abbot, who lived about a thousand years ago, writes, that the indictions were instituted by Augustus Cæsar, before the coming of Christ, in the first year of the hundred and ninety-fourth Olympiad ; for at the fourth indiction he writes that our Saviour was born, which Beda also affirms in his *cap. 47, de natura rerum.*

But under Augustus it not only denoted the year in which tributes were wont to be paid to the Romans, but also it shewed how many years it was after the payment of the tribute ; for, as the Romans

had dominion almost over the whole world, and had made the remotest countries tributary to them, Augustus, therefore, three years before the birth of our Saviour, ordered, that those who lived in the remotest places of the empire should only, (because of the difficulty of the roads), at the end of every lustre, or fifth year, pay their tribute; and in the end of the first five years, they should pay gold, as a type of dominion; in the end of the second five years, silver, for the soldiers pay; and at the end of the third five years, copper and iron, for repairing their arms.

But now the word *indiction* is commonly taken for the regulation of years, as well in public as private actions; and it is generally thought to direct the order of time, and to take away errors which might fall out in chronology. The way of reckoning by indictions was first invented by Constantine the Great; for neither public nor private writers before his time make mention of indiction in this sense; and that the eighth before the calends of October, in the year of our Saviour 313, the first indiction began, in which year Constantine defeated the tyrant Maxentius; *vide Craig, lib. ii, diæg. 7, de indictione*; where you will also see the following verses for finding the indiction.—

*Si per quindenos Domini diviseris annos,
His tribus adjunctis, indicto certa patebit;
Si nihil excedit, quindena indicto currit.*

The emperors, to the end that this constitution might not easily be forgot, decreed, as also afterwards the popes, that no instrument drawn up by public Notaries should be held firm and valid, unless the year of indiction was specified therein. According to the statute of the emperors, the cycle of indiction begins the 24th of September, at which time, because of the maturity of the grain, the tributes may be best paid; but, according to the decrees of the pope, it begins at the birth of Christ; wherefore the imperial

Notaries, officiating, by the pope's authority, in the courts at Rome, change the indiction, as appears in the acts of the council of Constance.

~~~~~

### TITLE III.

#### OF THE ANCIENT AND PRESENT STATE OF NOTARIES IN SCOTLAND.

BEFORE the reign of King James III, the papal and imperial Notaries did practise in Scotland, until the third parliament of that prince, holden at Edinburgh the 29th of November 1469; at which time an act of parliament was made, bearing this title and inscription,—*That Notars should be made be the king, and not be the emperor.* The preamble of which act, in regard it is cited to assert the independent sovereignty of our kings, in Mr. Anderson's *Independency of Scotland*, I shall here subjoin. *It is thought expedient, that seeing our Sovereign Lord hath full jurisdiction and free empire within his realm, his highness may make Notars and Tabellions, whose instruments shall have full faith in all causes and contracts civil within the realm; and in time to come, that no Notar, made by the emperor's authority, have faith in contracts civil within the realm.*

The Notaries in Scotland, at this time, who had been created by the authority of the emperor, were not wholly rejected; for, first, by the above act, it is ordered, *That full faith shall be given to all instruments given of before by the imperial Notaries as they are of avail*; and, next, they are deprived only in case they *be not examined by the ordinary bishop, and approved by the king.*

The authority of the papal Notaries is not so expressly abrogated, though it may be thought to be done indirectly, through the manner of expressing the act in the above-mentioned act of parliament relating to these, which is thus.—*And that full faith be given to the papal Notaries in time bygone, in all their instru-*



ments ; and also, because nothing is said concerning their authority in time to come ; whereby it would seem that our kings did restrain the pope's power in matters civil.

It may be further observed, from the narrative and preamble of the same act, that the instruments taken by the king's Notaries were to make faith in matters civil only, the spiritual being left where they were, *i. e.* to the clerical Notaries ; and that the king and his parliament intended only to restrain the pope's power in matters civil.

In the end of the said *act* 31, *parl.* 1469, it is ordered, *That the Notaries to be made by the king shall be examined before their ordinaries, bishops, and shall have from them a certificate of their faith, good fame, science, and ability, or fitness for the office.*

The clergy being the only persons knowing in the laws civil and canon, were most qualified to examine these Notaries ; and it is probable, that in all the kingdom there were none so fit. Besides, in the ancient times, and when the above act was made, none other than the clergy either aspired to this office, or were admitted to it ; because, *first*, it behoved the Notaries to have a reasonable understanding in the Latin tongue, wherein the instruments of greatest moment were to be written, and none except the clergy were at pains to study it ; for that being the language of the church, there was an absolute necessity for them to know it. And, *next*, it was requisite for the *Notar regni* to have skill in the style and form of all writings, evidents, and securities, with a little smattering of the law, which the meaner laity did not read, for want of ability to follow that study ; and the gentry, or nobles, who might possibly be learned in the law, disdained the meanness and servility of the employment of a common Notary. *Thirdly*, Laymen are only capable of civil affairs ; whereas the clergy were in capacity to serve in both spiritual and temporal matters ; by which

they had a great advantage over the other lieges, who could not find in this office of a Notary the encouragement that ecclesiastical Notaries would meet with; and, therefore, it is likely, that laymen never sought after this office; for, in all the ancient attestations of Notaries which I have seen, they are called *clerks of one or other of the dioceses in the kingdom*; which designation still continues at this day, though now none but laics are admitted Notaries; and at present they generally take that designation from the diocese in which they were born, or from that wherein they design to reside.

The king and parliament being jealous of the pope's usurpation and encroachment upon the prerogative-royal, did, by this *act 30, parl. 1469*, ascertain the king's right to create Notaries for civil affairs; so that it may be thought, that the apostolical or ecclesiastical Notaries, who, after due examination and trial, were allowed by the pope or bishop alone, could not, after this time, without license from the prince, meddle in temporal matters, as they had done in times past.

The power of the bishops over Notaries has been very considerable: for, by *act 64, parl. 1503*, it is statuted,—“That all bishops-ordinaries call before them the Notaries within their diocese, and make them to be examined upon their knowledge, and take inquisition of their demeanour and fame, and deprive and punish the culpable according to their demerit; and that they take inquisition of them that use false instruments, and punish them where it belongs to their office, or send them to the king.”

It may be thought that all Notaries, as well temporal as spiritual, were subjected to the authority of the bishops, in the examination and inquisition enjoined by this act: but because the crime of falsehood was by the laws, canon and civil, to be punished more severely than the ecclesiastical judge could

inflict, which could not go further than penance or excommunication, (which is meant by the words, *in so far as it belongs to his office-ordinary*); therefore, the bishops are ordered to send the users of false instruments to the king, in order to be punished by the civil magistrate.

The difference and distinction between Notaries into papal and regal, *i. e.* spiritual and temporal, is manifest from the last-cited *act* 64, *parl.* 1503; from which it also may appear, that to entitle the papal Notaries to meddle in civil affairs, it behoved them to be examined by persons deputed by the king, in order to be made royal. The words of the act are, —“ And the persons that they find acceptable, that they send them with their writings to the king’s highness, who shall depute certain persons to examine them; and if they be gainand,” *i. e.* if they be fit, proper, suitable, and qualified, “ to make them regal, if they be not regal of before.”

This is farther manifest from the *act* 76, *parl.* 1540, ordering every sheriff to call before him and examine all Notaries, laic men, within his sheriffdom; and, by an act in judgment, to admit such as are *famous*, (*i. e.* men of good reputation), and able to execute the office. Yet it is not to be thought, that the power of creating Notaries was, by this law, conferred upon the sheriff, who never had such jurisdiction; but that the sheriff being the king’s chief magistrate in the shire, constitute to put the laws in execution, and to see them duly observed by the lieges, the king and parliament thought fit, in order to put a stop to the confusion and falsehood which the multitude of Notaries had occasioned, to order the sheriff to try the qualifications of the Notaries living within his territories, and to authorize such as were honest and skilful to continue in the office, &c. and to discharge all others. And that this is the genuine interpretation of this act, is clear from the last part of it, ordaining all Notaries which were to

be created after the year 1540, not to exerce their office, till they should first appear before the sheriff, and get their admission, with their sign and subscription, recorded in his books, &c. And in another clause of this act, all ordinaries are enjoined to do the like with respect to Notaries within their diocese, who are spiritual men. And further,

By this act, the sheriff is to discharge all except writers, Notaries, and scribes in the king's courts of justice, who shall be admitted by the Lords of Council. I thought proper to touch this clause, lest any, through inadvertency, might fall into a mistake, and think, that, at this time, and by this clause of the act, the Lords of Council, *i. e.* of the Session, had a power to admit Notaries; whereas, by these words, *writers, Notaries, and scribes of the king's courts*, which are synonymous, no others are understood than the clerks of these courts; for, as was observed before, the office of the *scriba*, and of the *tabularii*, was like unto that of our clerks: though the office is still the same, yet the ancient name of *scriba* is changed to the newer one of clerk. In the preamble of *act 81, parl. 1540*, it is noticed as a great inconveniency, that instruments and acts made by the scribe of the court, bear one way, and those taken in the hands of other notaries, bear another way; whereby the scribe of the court is meant the clerk.

And also, it was noticed before, that the names *tabularii*, *tabelliones*, and *scriba* were confounded, and sometimes made to signify the same office and employment, and were so used with us, as is clear from the same *act 81, parl. 1540*, whereby it is statute,—“That all instruments, notes, and acts be made and taken in the hands of the scribe and notar-ordinary of the court:” and in the end it is said, of the notar and scribe of court: and in the preamble of *act 31, parl. 1469*, the names *notar* and *tabellion* are made synonymous, expressing the same office. And as *scribe* and *notar* were promiscuously used, so are also

the names of *notar* and *clerk in court*, as is clear from the *act* 78, *parl.* 1540, where it is said,—“ Because great credence and faith is given to the notars and clerks of court, it is statuted, that all sheriffs, &c. present their clerks and notars in presence of the Lords of Council,” &c.

Further, the clerks of session, or of any other sovereign court within Scotland, are, upon their admission, and by virtue thereof, empowered to do every thing falling within the verge of their office, as fully and amply as if they had, in the solemn and formal manner appointed by law, been admitted Notaries; so that instruments in the hands of these clerks in processes, and acts judicial in their court, make as much faith as the instruments of any Notary-public; *Mackenzie's observ.* on *act* 79, *parl.* 9, Q. Mary. Now, the clerks of session are admitted in a way very different from that of creating a Notary-public.

To return to the authority of our bishops, with respect to Notaries: By *act* 24, *parl.* 5, Q. Mary, 1551,—“ The sheriffs are ordered to bring or send all Notars, temporal men, within their shire, and the ordinaries shall bring or send all spiritual Notars to the burgh of Edinburgh, to present them to the Lords of Session, &c. to be examined, and, if qualified, to be admitted.” From which it is evident, that the ecclesiastical Notaries were under the direction of the bishop, and the laic Notaries subject to the command of the sheriff. But in the acts of the parliaments subsequent to this, made concerning Notaries, I find no more regard is paid to bishops; for by *act* 43, *parl.* 6, Q. Mary, 1555, (three years before the reformation of religion from popery, which, in Scotland, is stated to the year 1558),—“ All Notaries, both spiritual and temporal, are ordered to come personally to Edinburgh, and to compear before the Lords of Council, bringing with them their creation and protocols, to be examined; and such Notaries as should be found

qualified, are to be admitted by the Lords to the office of Notary." And, by this act, it is further ordained,—“ That no Notary, by whatsoever power he be created, shall use the office of Notary within the realm for time coming, except he first present himself to the said Lords, shewing his creation, and be admitted by them thereto.” The contemners are ordered to be punished as follows.—“ Their moveables are to be escheated, and applied to the sovereign’s use ; and they are to want their right hand, and to be banished the kingdom for ever.” But although this act ordains all Notaries, “ both spiritual and temporal, to come personally to Edinburgh, and compear before the Lords of Council,” &c. yet it is not to be thought that this law gives the Lords authority of making Notaries, either spiritual or temporal ; because the power of creating the first kind was the bishop’s right, popery at this time being maintained in its full force. And the design of this act, with respect to the Lords, is the same as that in the 1540. with respect to the sheriff ; for the power of admitting candidates to the office of Notary was not conferred on the Lords of Session till after the reformation, when the tyranny and usurpation of the popish clergy was dashed in pieces. And since the reformation, the restraint to the church’s power in this behalf, is further established by *act 76, parl. 9, Q. Mary, 1563, statuting*,—“ That no person shall take upon hand to exerce the office of a Notary, by no manner of creation to be made in time to come, under the pain of death, unless they be created by the sovereign’s special letters, and thereafter examined and admitted by the Lords of Session,” &c. And in the end of the act,—“ If any person attempts in the contrary, in creating or making Notaries, or in using the office otherwise, they shall be punished to the death.” So that, by this act, the Lords of Session have the full power and jurisdiction of admitting Notaries, who may

exerce the office in all matters, legal, spiritual, and temporal, over all the kingdom, as fully as any other Notary, apostolical, imperial, or regal, could have done in ancient times.

This act, in so far as relates to the manner of creating Notaries, viz. by the sovereign's letters, had not been in use these many years. Sir George Mackenzie, in his observations on the act, informs us, that they were not in use in his time: however, they are still engrossed in the Notary's act of admission. From these acts it is manifest, the bishop's power to make Notaries was abolished. But further, the spiritual Notaries, who had been duly created by the bishops in times before, are ordered to be of new examined by the Lords of Session; and, if qualified, to be by them admitted to the office of Notary. And now, at this time, the clergy cannot meddle in the office of Notary; for, by *act 133, parl. 8, Ja. VI*, all ministers who exercise or officiate as Notaries, are to be deprived; yet the act does not expressly annul the writs; and, therefore, a contract of marriage, subscribed by a minister in place of a Notary, was sustained, though it was found, that the minister was thereby deprivable; 12th July 1631, *Hossingtoun contra Bartilme*, observed by Durie. Nevertheless, by this act, ministers may officiate as Notaries in testaments.

Before I shew the present form and way of admitting Notaries, I shall give the definition of a Notary, and declare the requisite qualifications of the person to be admitted.

A Notary then is,—“ A public person, who, upon examination and trial, being admitted by the Lords of Session, gets power to form and take instruments in any honest and lawful business, which make faith in law.” Whoever aspires to this office must be of a competent age, which is accompanied with judgment; no pupil, or one nearer to pupilarity than to majority, is received. And seeing a

Notary is a kind of judge, the civilians call him a *chartulary* one. It is reasonable to circumscribe his age, by the same rule that is made for that of judges ; and as, by the laws of Scotland, none can be a judge until he be twenty-five years of age complete, therefore, the Lords of Session, by their act of sederunt 1595, declared, they would only receive to be Notaries such as were past twenty-five years of age : but this act is not observed ; for now, they are admitted before twenty-five, and the age is left to the discretion of the Lords.

As all candidates for any civil public office, so, in this of Notary, the person must be of untainted fame and reputation, of entire honesty, free from any thing that infers infamy, or any suspicion of it ; *Brun. ad tit. Cod. de infamibus, n. 4* ; and that they be deserving of trust ; for great veracity and fidelity is requisite in one who, by his writing and subscription, bestows a formal being and public authority on a deed ; *Perez. ad Cod. tit. de tabular. scribis, &c. n. 81*. For great faith and credence is given to Notaries ; *act 78, parl. 1540*. And the constitution of the Emperor Maximilian, in the year 1512, § 1, in this behalf, is, *Quod circa personas approbandorum, vel denuo instituendorum, habeatur ratio conditionum et qualitatum earundem, &c.* And the parliament in the year 1503, in the reign of K. Ja. IV, in the act 64, takes notice of the many complaints of the lieges, that, through the falsehood of Notaries, honest men were not sure of their heritage, nor clerks of their benefices ; therefore, inquisition is to be made of the demeanour and fame of all the Notaries in the kingdom, and power given to deprive the culpable.

And because a Notary is a person that deals in law-matters, therefore, he must have a sufficient knowledge of the employment ; for none but such as are famous, and able to execute the office, are to be admitted ; *act 76, parl. 1540*. And these external and acquired qualifications that the law requires, ac-



cording to *act 45, parl. 11, K. Ja. VI*, are, that the Notary to be admitted shall have a reasonable understanding of the Latin tongue, so as to write it congruously : that they have served truly for seven years a Lord of Session, a commissary, writer to the signet, or the clerk of some sherifffdom, stewartry, baillery, or of an head burgh ; and that not passing-ly now and then, but attended and ministered to the judge, writer, or clerk, in matters respecting their office during the above space ; and at the time of their examination, report to the Lords of Session a testimonial of their truth and qualifications.

This act narrates, that many Notaries being admitted upon slender trial, are, for the most part, ignorant of the common course of law, form, and practice, which ought to be observed in their instruments, contracts, and other securities, not knowing what may stand in law, and what not, which hath engendered many pleas among the lieges ; for remedy whereof the act was made.

The Lords, by the above-cited act of sederunt 1595, ordained those only to be received who can write an evident in Latin or English, and who had been apprentice to a Notary for the space of five years.

Any person who at present desires to be admitted Notary, goes to the clerk to the admission of Notaries, who formerly had his commission from the clerk-register, but now, since the accession of his present Majesty, he has it immediately from the king ; and he presents him to the Lords, by giving in a petition for him ; which petition is signed by the entrant, and bears in substance,—“ That he having spent some part of his time in studying the laws, forms, and practics of this kingdom ; and being now inclined to use and exerce the office of a Notary-public, craves, therefore, to be examined, and, being found qualified, to be admitted ; and that the Lords may grant warrant to the clerk to

the admission of notaries to mark his protocol-book, receive his cautioner," &c.

This bill, before it be given in to the Lords, must be attested by one or two advocates, and as many writers to the signet, setting forth their knowledge of the person desiring to be admitted, of his good fame, and qualifications to exercise the office of a Notary ; for, by act of sederunt, 30th July 1691, it is enacted, " That none be admitted Notar, but on a petition given in to the whole Lords in presence, with a certificate subscribed by credible persons, that the petitioner is of good fame, and has had good breeding for qualifying him to exerce that trust ; and that the Ordinary on the bills, and other Lords Examinators, being met together, take exact trial of the person's knowledge and qualifications, before he be admitted." This petition being read in presence, the Lords generally remit to the Lord Ordinary on the bills for that week, and the next week's Ordinary, to take trial of the petitioner's qualifications. Formerly one of the four ordinary macers of the session, at twelve o'clock, did take the entrant, with his bill, to the two Lords Examinators, appointed by the remit on the back of the petition ; who, by the above-cited *act* 45, *parl.* 11, K. Ja. VI, are to cause the person to be admitted, give, in their presence, a full proof of his writing and congruity, by forming some evident ; as a charter of ward, blench, feu-farm, burgage, mortification, or apprising ; a precept passed on a retour, a precept of *Clare constat*, an infeftment upon resignation *in favorem*, or *ad perpetuam remanentiam* ; an instrument of seisin, a contract, a compromit, an acquittance, a procuratory, a tack, a reversion, an obligation, or some other common form of evident.

But of the late, the Lords Ordinaries have been in use to remit the entrant to two writers to the signet, who examine him on his abilities and qualifications, and upon their report of his being found qualified,

the Lords, of course, grant warrant to the clerk to the admission of Notaries, to receive his caution, mark his protocol-book, and take his oath *de fidei administratione*.

The entrant must also take the oaths of assurance, allegiance, and abjuration, which generally takes place before the Lord Ordinary in the Outer-House. The whole charges of admission, including the clerk's fees of the oaths, is 36l. 8s. 6d. sterling.\*

The Notary being thus admitted, in his protocol-book, his act of admission and cautionary, with the sign and subscription-manual, that he is to use at the end of all public instruments, are inserted. All which shall be shewn in the next title.



## TITLE IV.

## OF THE NOTARY'S PROTOCOL AND CAUTIONER.

THIS word *protocol* is derived from the Greek *πρωτος*, *primus*, and *μελον membrum*, because it is the first draught of an instrument. It is defined by Viglius, in the title of the *Instit. de test. ordin. n. 5*, to be *the first sketch of the business, made for the sake of memory, from whence afterwards the instrument is to be extended*.

The Emperor Maximilian, in his constitution concerning Notaries, § 2, ordains,—“That every Notary have a protocol, and that he keep it carefully, and write in it in order, with his own hand, all the acts

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|                                      |   |   |    |       |    |     |
|--------------------------------------|---|---|----|-------|----|-----|
| * Stamp for commission,              | - | - | L. | 20    | 0  | 0   |
| Principal clerk,                     | - | - |    | 11    | 0  | 0   |
| Depute clerk,                        | - | - |    | 2     | 12 | 6   |
| Clerk's dues of petition,            | - | - |    | 1     | 0  | 0   |
| Macers, Lord President's clerk, &c., | - | - |    | 1     | 16 | 0   |
|                                      |   |   |    | <hr/> |    |     |
|                                      |   |   |    | L.    | 36 | 8 6 |

and instruments verbatim, to which he was Notary; and that he keep and preserve a register of them, so that recourse may be had to the protocol or register, both in order to supply instruments that are lost, either before or after the Notary's death, and likewise to clear any doubt or question that may arise from them."

By the laws of Holland, the Notary must write down in his protocol all instruments to which he was Notary, having the subscriptions of the parties and witnesses, and that of the Notary himself; and thereafter transcribe the instrument therefrom, bearing, that it agrees with the protocol; which, if the Notary neglect, he is to be deprived of his office, and undergo an arbitrary punishment; *Edict. Car. V*, 4th Oct. 1540, *art. 13*, *vol. 1*, *placit. Holl. p. 318*. Nevertheless the instrument is not thereby improved; for this would be affording an opportunity to Notaries, corrupted by bribes, or otherwise, to render useless all instruments to which he was Notary; *Rade-lan. cur. Ultraject. decis. 125, n. 2*. And by the civil law, instruments extracted from the protocols of Notaries, written by the Notary himself, are held as authentic, and not as copies, because they are written by a public person; wherefore they make faith in judgment, although the protocol be lost; *arg. l. 17, Cod. et l. penult. ff. de fide instrum. et Fachin. controuv. jur. lib. 11, controuv. 38*. And it may be inferred from the 77th act, *parl. 6, Ja. V*, that, at that time, an extract from a protocol was probative as a principal instrument.

By act 43, *parl. 6, Q. Mary*,—"All Notaries are ordained to produce their whole protocols, in order that they may be marked by the Lords, the leaves numbered, and the blanks marked in presence of the Notary; and these protocols to be delivered back, without any inspection or reading." And,

By act 45, *parl. 11, Ja. VI*,—"All Notaries are ordained, betwixt and the first of January 1588,

to bring and present before the Lords of Session, their protocol-books, to be considered by them. The Notaries failing to present their protocols, shall not only be deprived, the instruments given after forth by them declared null; but also they shall be pursued as transgressors of the king's laws and acts of parliament, and punished as persons defamed, and unworthy to bear office or place of credit thereafter."

In all the former acts concerning Notaries, there is no mention made of his cautioner, until this *act* 45.—“ For the Lords,” by this act “ are, at the inspection of the protocol-book, to know how many of the cautioners are alive, that, to the contentment of the Lords, other new and sufficient cautioners be found in place of the cautioners deceased, or who shall be found insufficient. And it is likewise statuted by this act, that the bonds and acts of each cautioner shall extend against his heirs; and that each cautioner to be found in time coming by Notaries, for due administration in their office, shall be in special obliged that their protocol-books shall, within fifteen days after the Notary's decease, be brought to Edinburgh, and delivered to the clerk of register, or his deputes, who shall be holden to satisfy, at the sight of the Lords of Session, the relict, bairns, or executor of each Notary, for the same. The protocol-books are to be kept in the king's register, and the clerk of register, and his deputes, shall be answerable therefore, and make the same patent to all the lieges having interest, upon reasonable expence.” The reason why they are ordained to be brought to the register is, that false papers may be hereby tried, and lost papers may be made up; for if an instrument be lost, the person in whose favour it was at first made, may raise an action before the Lords, craving that it may be made up out of the Notary's protocol: and this being *nobilis officii*, cannot be done before

inferior courts; *vide Mackenzie's observ.* on act 45, *parl.* 11, Ja. VI. But the above act has not been duly executed, as appears from act 22, *parl.* 22, Ja. VI. And the reason there given for the non-execution is,—“The intolerable charge it would draw upon the clerk-register, to give satisfaction to the relict of Notars for their protocols, in regard of the great number of these books.” Wherefore,

The king and parliament, by this act, discharges that part of the former, “ordaining the clerk-register to give satisfaction to the relict, &c. and ordains all persons, relicts, children, executors, or others, havers of any protocol-books, as well of Notaries already deceased, as of Notaries that shall happen to decease at any time hereafter, to inbring these books to Edinburgh, and deliver them to the clerk of register, or his depute, to be appointed by him for that effect, under the pain of 100l. Scots; at the delivery and inbringing of which protocols by the relict, &c. the clerk-register, or his depute foresaid, is ordained to make a note of the names of the said relict, &c. of the defunct Notaries, to the effect that when any shall pursue for a transumpt of any instrument forth of the same, he shall be astricted to summon the relict, &c. to the end satisfaction, at the modification of the Lords of Session, may be made to them. And by this act it is declared, that the foresaid clause of this act for inbringing of protocols, extends not to clerks of burghs-royal, whose relict, &c. are holden to deliver the same to the magistrates of the burgh, to be made forthcoming to all having interest.”

And by act of sederunt, the 29th July 1680, it is ordered,—“That letters on six days be direct at the clerk-register's instance, or his depute, to the admission of Notaries, charging the relict, executors, and cautioners of Notars, to bring in, and deliver to them the protocols of deceased Notaries, conform to the acts of parliament; and also, charging No-

tars who have informal or defective protocols, to produce them at the head burgh of the shire where the Notary does reside, before the said depute; and when cautioners are unsufficient, to renew the same; and that general letters be directed, at the clerk-register's instance, for that end, on a list subscribed by him."

In a decision, 19th February 1680, the Lord Register *contra* Sir William Primrose, clerk of the Notaries, it was found, that the Register's depute, called *the clerk of the Notaries*, was deprivable, for not calling in the protocols of deceased Notaries by the space of five years; to which the Lords found him actually obliged, though it was alleged, that, by the acts of parliament, he was only obliged to receive the protocols when they were brought in, but not to call for them: nor was it possible for him to know when Notaries died; and, therefore, by the above-mentioned act, 45 *parl.* 11, Ja. VI, sheriffs, &c. are ordained to acquaint him of the death of Notaries within their jurisdictions: for it was urged, that the obligation to bring in the protocols being committed to this clerk, and he being only intrusted with it, the act would be elusory, if he were not obliged to do diligence, since none else could do it, and he might easily inform himself, at least once a-year. It was also debated, that, by the above act, the clerk to the Notaries was obliged to understand sufficiently the office of a Notary; though it was answered, that he was no further obliged than to draw a bill for their admission. *Vide Mackenzie's observ.* on the above act, and *Stair's decisions*, part 2, p. 759.

The Notary then gets from the clerk to the admission one of these protocol-books; and this protocol is marked by the clerk on each leaf, by the subscription of his name; and he prefixes a doquet to the book, certifying the number of pages.

The following act of admission was formerly not

only inserted in the register kept by the clerk of the Notaries, but likewise inserted in the Notary's first protocol. At present, it is only inserted in the register kept by the clerk, and the Notary gets a commission signed by him, in which the long doquet is also inserted; which commission, for a further illustration of this subject, I thought proper to insert: and although the king's letters are not now used to pass his Majesty's own hand, (as has been said, *p.* 14), yet they pass the cachet, and are delivered to the Notary, which he keeps.

*At Edinburgh, the      day of      one thou-  
sand eight hundred and      years, and  
of his Majesty's reign the      year,*

In presence of the Lords of Council and Session, compeared *A B*, writer in Edinburgh, son of *C D*, merchant in Edinburgh, and represented to their Lordships, by petition, that he was duly presented, and fully qualified to exerce the office of a Notary-public: And, therefore, prayed their Lordships to admit him thereto, upon his being found qualified, in terms of the acts of parliament. And with the said petition he produced a presentation of the tenor after written.—

### GEORGE R.

Lord President, and remanent Lords of Council and Session, we greet you well: Whereas we are informed that our lovite *A B*, writer in Edinburgh, hath, by his literature and good education, sufficiently qualified, himself to exerce the office of a Notary-public: Therefore, we have constituted and created him a Notary-public during his life, with all the casualties and privileges thereto belonging, provided your Lordships find him sufficiently qualified for that purpose. And it is our will, that ye admit him to the said office, if after trial taken, ye find him sufficiently qualified for



the same; receive his oath, and caution for the due administration thereof, and authorize him, with your Lordships testimonial thereupon. Given at Edinburgh, &c. Sic sub. *G A*.

And conform whereto the said Lords of Session having remitted to the Lord *C* and Lord *K* to take trial of the qualifications of the said *A B*, and they, after trial taken, having found him sufficiently qualified, the said Lords of Session, upon the said 1st day of February, admitted the said *A B* to the office of a Notary-public, and remitted to the clerk to the admission of Notaries, to mark his protocol-book, receive his caution, and take his oath *de fideli administratione*. And accordingly, in presence of Sir *G A* of B, Bart. compears the said *A B*, and makes oath *de fideli administratione*. And having received from the said clerk a protocol-book, containing the number of ninety-one leaves, all duly marked, with the clerk's sign and subscription-manual upon the first, the last, and every tenth leaf, and with his subscription upon every other leaf; he the said *A B*, and *X Y*, writer to the signet, as cautioner for him, hereby enact, and bind and oblige them, jointly and severally, and their heirs, executors, and successors, for the said *A B*, his honest and faithful administration of his office, conform to law, under the pain of deprivation, and such other punishments as the said Lords shall inflict; and likewise of such fine to be paid by him, and his said cautioner, as the said Lords shall think fit, and to satisfy and pay to every person prejudged by his mal-administration such damages as the said Lords shall modify, under the penalty of one hundred pounds *Scots*, over and above performance: As also, that the said Notary shall use the like sign and subscription-manual as is hereto annexed in all instruments of seisin, resignation, and other instruments of importance which shall be given by him; and shall insert all such instruments of importance in his protocol-book, within fifteen days after his

subscribing thereof, under the like penalty of one hundred pounds *Scots* for each failure, besides forfeiture of his office, which by such failure shall *ipso facto* cease and become void: As also, that how soon the protocol-book now delivered to him shall be completely filled up with instruments as aforesaid, that he the said Notary shall, within fifteen days thereafter, take a new book, marked by the said clerk, or his successors in office; and successively as a former book shall be finished, shall take a new one, marked as said is, under the penalty of one hundred pounds *Scots* for each failure: As also, and under the like penalty, that the said Notary shall make patent his protocols, to be inspected by the said clerk, or his successors in office, as oft as desired: And that the heirs and executors of the said Notary shall, within sixty days after his death, bring and deliver all his protocol-books to the said clerk, or his successors in office. And he the said Notary obliges him and his foresaids to relieve his said cautioner and his foresaids of the premises, and all costs and damages thereby, and to find new sufficient caution, in case his present caution shall prove insufficient. And both of them consent that letters of horning on fifteen days charge may pass upon a decret to be interponed hereto, and to which the said Lords have interponed their authority accordingly, at *Edinburgh*, the                      day of  
one thousand eight hundred and  
years.

Here follows the doquet, as in *p.* 27 and 28.

COPY of the COMMISSION presently given and subscribed, upon Stamped Paper, by the Clerk, to all Persons admitted Notaries.

*At Edinburgh, the            day of            one thousand eight hundred and ten, and of his Majesty's reign the 50th year ;*

Which day, *A B*, writer in Edinburgh, having been duly and lawfully constituted and created Notary by me, and presented to the Lords of Council and Session, is, after examination, found qualified, and thereupon admitted by their Lordships a Notary-public, with his Majesty's authority to use and exerce the said office as fully and freely as any other does, or many do, within Scotland. And as he hath given his oath *de fidei administratione*, and received a protocol-book, containing the number of ninety-one leaves, all duly marked by the clerk hereto subscribing, so he hath found caution for the honest, faithful, and due administration of his office, conform to law, and is to use the like sign and subscription-manual, as is hereto annexed, in all instruments of seisin, resignation, and other instruments of importance which shall be given by him. Extracted upon paper, first duly stamped, from the record of the admission of Notaries by me Sir *G A*, clerk thereto, this            day of            one thousand eight hundred and ten.            Sic. sub. *G A*.

*Follow the Sign and Subscription-Manual to be used by the said A B, in all Instruments of Importance.*

Præmissa attestor.

*A B, N. P.*

*Et ego vero A B, Clericus Edinburgensis dioceseos, ac Notarius-publicus auctoritate regali, ac per Dominos Concilii et Sessionis secundum tenorem acti parliamenti admissus : Quia præ-*

*missis omnibus et singulis, dum sic ut præmittitur, dicerentur, agerentur, et fierent, una cum prænominatis testibus præsens personaliter, interfui; eaque omnia et singula præmissa sic fieri et dici, vidi, et scrivi, et audiui, ac in notam cepi, ideoque hoc præsens publicum instrumentum manu mea (vel aliena) fideliter scriptum exinde confeci, ac in hanc publici instrumenti formam redegi, signoque, nomine, et cognomine meis solitis et consuetis, signavi et subscripsi, in fidem, robur, et testimonium veritatis omnium et singulorum præmissorum rogatus et requisitus.*  
 A B, N. P.

The above doquet is also written at the end of the act of admission, in the clerk's register, in a column towards the right hand, and towards the left is written the Notary's sign and subscription-manual, and at the foot the cautioner subscribes, and again the Notary for his relief. And further, this doquet is used by the Notary in all instruments of moment; and for instruments of lesser moment he has another short one, which is not made up of a number of fixed and unalterable words, like the attestation subjoined to instruments of higher importance, but is such as the Notary also assumes to himself at his admission; one or two of which I have thought proper to subjoin, and shall not repeat them hereafter; as, *Quod vidi assero.—Quæ attestor.—Præmissa esse vera, ego A B Notarius-publicus requisitus, attestor: Or, Ita esse ut præmittitur, ego A B, N. P. rogatus, attestor:* and the like.

Besides these doquets, there are two or three more composed of a certain form of words suitable to the business or paper they are applied to; and that either in attesting doubles of original papers, or subscribing for persons who cannot write. The doquet adjected to copies of writs will run thus.—

“What is above [or before] written, is a true, full and exact copy of the original, &c. [here take in

*the name of the paper*] made and granted by *A* to *B*, of the date, tenor, and contents particularly above [or before] written, without addition, diminution, or alteration whatsoever; being duly collationed and compared by us Notaries-public, at, &c. before these witnesses," &c.

The same in Latin.

*Quod est supra [vel antea] scriptum, est vera, plena, et exacta copia originalis, &c. facta et concessa per A, ad et in favorem B, de data, tenore, et contentis particulariter supra [vel antea] scriptis, absque additione, diminutione, et variatione aliquali, debite collationata et comparata per nos Notarios-publicos subscribentes, apud*  
*die mensis* *anno Domini millesimo*  
*octingentesimo* *coram his testibus, &c.*

*Another Form of the same.*

" I *A* Notary-public under subscribing, do hereby testify, that this present copy above written, taken from the original instrument or contract, &c. of the date and tenor at length above written, being diligently hearkened, seen, and read by me; and because in all things, and by all things, I found it to agree *verbatim* with the principal and original above specified; and that it is neither rased nor cancelled in any part thereof; therefore I, together with another Notary-public, have subscribed the same, testifying this by our sign and subscription-manual, at before witnesses, specially called and required to the premises."

" So it is, I *D*, Notary-public, and co-notary in the premises, specially called and required, do testify the truth of the above-named copy, in all things, and by all things, as above set down, by this my sign and subscription-manual."



## PART II.

### OF NOTORIAL INSTRUMENTS OF ALL KINDS.

#### TITLE I.

##### OF INSTRUMENTS IN GENERAL.

IN the former part of this Treatise, I have given a short account of the different kinds of Notaries, and the way presently used of admitting such as incline to practise that employment in this kingdom: In the next place, I come to narrate the several kinds of instruments that are commonly now in use, as well for the completing, as those requisite and necessary for the extinction of heritable rights; in doing of which I shall endeavour, as much as possible, to illustrate the instruments, so as that one may be enabled to extend, form, and draw up any instrument whatever.

An instrument may be defined, *A solemn and duly regulated deed or writing, made and given under the hand of a Notary-public, as a proof and evidence of what is legally done, and formally therein represented.*

The requisites of all instruments, as well as every other law-writing, consist in its being agreeable to law, and such as is in common use; its being certain either in itself, or relatively, with respect to another writing mentioned in it, and to which it refers, and by which it can be made certain and determined, and from which may appear what it contains: for it is equipollent in law, not to be, and not to appear; and an instrument that is doubtful, uncertain, or general, makes no faith.

In its form, it must be perfect, *i. e.* have all the usual clauses of style, and other solemnities: it must not be rased or scraped with a knife, or vitiated in any part of it, which will mar and keep it from being probative: for every writing is individuou, *i. e.* it must be admitted wholly, or rejected wholly, except it consist of divers articles of separate matter, so as one of them do not relate to the other, and may subsist by itself; but this is doubtful, and depends on circumstances *in arbitrio judicis*.

The mind and design of parties should be distinctly set down, and expressed in words not vitious in orthography or grammar, and the sentences well conceived, that the writing be effectual and obligatory: for the words set down are to be judged not to be idle, but operative.

The settled order and tenor commonly made use of in that kind of writing, and established by immemorial custom of style, is to be observed.

Of this order in general there are three parts.—1. The beginning, from which the minds of the contractors may be gathered. 2. The middle, which is regulated by the extremes, *i. e.* the antecedents and consequents. 3. The end or conclusion.

The requisite solemnities in all instruments, by the civil law, were these following.—The year of the emperor's reign; the name of the present consul; the number of the indiction; the month, and day of the month on which the instrument was made; *Novel. 47, cap. 1, in pr. § 1*: the witnesses names and designations present; *Novel. 73, cap. 1 & 2*; and see *Wesenb. ad Pand. de fide instr. n. 5*: the name of the Notary; and to all which the Emperor Maximilian, in his constitution concerning Notaries, made in the year 1512, § 1, ordered, that the name of God should be invoked in the beginning of all instruments.

In this kingdom instruments of moment are completed by the solemnities following.—1. The invo-



cation. 2. The year of our Lord. 3. The month. 4. The particular day of the month. 5. The year of our sovereign's reign. 6. The presence of the Notary and witnesses. 7. The compearance of the party, or his procurator. 8. The substantial part of the instrument. 9. The requiring instruments from the Notary by the parties concerned upon what was done. 10. The place where, and the particular hour of the day in which the instrument was taken. 11. The names and designations of the witnesses present. *Lastly*, The Notary's doquet. All will be clearer by the following example.—

*IN nomine Domini \* nostri Jesu Christi, Amen. Per hoc presens publicum instrumentum cunctis pateat evidenter et sit notum, quod anno incarnationis Domini millesimo octingentesimo decimo, mensis vero*

*, regnique S. D. N. † Georgii Tertii, Dei gratia Britanniarum Regis, Fideique Defensoris, anno quinquagesimo, in mei Notarii-publici testiumque subscribentium ‡ prasentia personaliter comparuit A, [hoc loco instrumenti pars substantialis inseritur, et deinde subsequuntur hæc verba], de et super quibus omnibus et singulis dictus A, a me Notario-publico subscribente, sibi fieri petiit unum vel plura instrumentum seu instrumenta, publicum seu publica. Acta erant hæc Edinburgi, in domo B, mercatoris ibidem, in clausura vulgo vocata.*

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\* Vel, *In Dei nomine, Amen.* Vel, *In nomine Patris, Filii, et Spiritus Sancti, Amen.*

† By these letters *S. D. N.* is to be understood *Serenissimi Domini Nostri*; and I find that the Roman emperors, in all public instruments, were called *Sacratissimi*.

‡ In old style, it was called *subscriptorum*; but since the act of Parliament 1681, all witnesses must sign instruments of importance, (as shall be noticed hereafter); and, therefore, since that act, this word is changed from *subscriptorum* to *subscribentium*.

*et in inferiore camera ejusdem, horas inter et ante [vel post] meridiem die, mense, anno Domini regni que Regis suprascriptis, presentibus ibidem probis viris C et D testibus ad premissa vocatis pariterque rogatis et requisitis. [Deinde subsequitur signum cum sigillo Notarii].*

*The same in English.*

IN the name of God, Amen. Be it known to all men by this present public instrument, that upon the       day of       , one thousand eight hundred and ten years, and of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, the 50th year, in presence of me Notary-public, and witnesses subscribing, compeared personally *A*, [*here insert the substantial part of the instrument, and then the formal, as follows*]; whereupon all and sundry the premises, the said *A* asked, required, and took instruments, one or more, from me Notary-public. These things were done at Edinburgh, in the house of *B*, merchant there, in       close, and in the lower room thereof, betwixt the hours of       and       before [*or after*] noon, before, and in presence of *C* and *D*, witnesses to the haill premises specially called and required, &c.

As to the place where the instrument was made, it is to be remarked that it is twofold.—1. The place in general, as that of a city, village, mansion-house, &c.; and, 2. What the lawyers term *locus loci*, or the special house, or particular room of that house, as in the above instrument; as to which, if the business require the *locus loci* to be mentioned, then the instrument must bear it. *Vid. Author. Artis. Notariat. p. 304.*

The words *asked and required* are so necessary in all instruments of importance, both with respect to the Notary and witnesses, that Craig, *lib. 2, dieg. 7,*

tells us, that the omission thereof with respect to the Notary, will vitiate the instrument; and further adds, that the difference betwixt the Notary's being asked and required, and the witnesses, is, that the requisition of the Notary is always to be expressed, but that of the witnesses may be sometimes presumed.

Of old, the inserting and designing of witnesses was sufficient, although they did not subscribe; but by *act 5, parl. 3*, Charles II, all writs are declared null and improbative, except the witnesses subscribe; and the act particularly mentions, that witnesses must subscribe *all instruments of seisin, resignations ad remanentiam, and instruments of intimation of assignations, translations, or retrocessions to bonds, &c.* From this statute, it is fit to observe, although other instruments taken by Notaries, not mentioned in this act, continue in their former condition, and need no subscribing witnesses; nevertheless it is more secure, that witnesses subscribe all kinds of instruments, which will the better fix in their memory what they sign: for which end every Notary ought to be cautious to have present with him, at all his instruments, honest and faithful witnesses, not liable to any exception, and always such a number of them as are requisite and necessary for the particular business to which they are called; and the more the better; but at the least two. *Vide infra, tit. 8.*

Instruments of less moment do not require so many solemnities; and the invocation is generally omitted; and, for most part, they begin with the place, day of the month, and particular name thereof, the year of God, and of the king or queen's reign, in the following manner.—

*Apud Edinburgum, die mensis anno*  
*Domini millesimo octingentesimo decimo S. D. N. regis*  
*anno quinquagissimo; Qua die, in mei Notarii-publici*  
*et testium, &c.* Or thus, in English.—“At Edin-  
 burgh, the day of one thousand

eight hundred and ten years, and of his Majesty's reign the 50th year; The which day, in presence of me Notary-public," &c.

There are, in most part of instruments, three persons necessary, besides the witnesses, as in seisions, intimations, requisitions, &c.

For the completing of seisions, the presence of the superior, or his bailie, the vassal, or his attorney, and the Notary, are requisite; for intimations, the person intimator, the person to whom intimate, and the Notary; for requisitions, the person requiring, the person from whom required, and the Notary.

As a Notary is a sort of judge, (the civilians, as has been already observed, call him a *chartular one*), exercising voluntary jurisdiction, he can do nothing but at the desire, and by the order of parties, or their procurators; therefore, he cannot be Notary and witness to his own deed, as was found in the case *Leckie contra Cuningham*, 20th November 1627, observed by Durie; nor can he be both procurator and Notary; *Mackenzie's Institutions*, book 3, tit. 5, § 3; and *Scot contra Drumlanric*, July 3, 1628, observed by Durie: nevertheless, according to foreign custom, and for the facilitating of commerce, it is ordinary for Notaries in this kingdom to protest bills at the desire of merchants without any procurator.

When one is authorized and empowered by another to appear in any business as his procurator or attorney, it ought to be done by a writ under the party's hand; and although the constituent's papers are frequently holden as sufficient, yet the Notary ought to be conscious of this mandate to the procurator: however, in requisitions this does not hold; for an instrument of requisition was found null; because it did not bear a procuratory produced the time of the requisition; and although another instrument was produced, extended by the same Notary, bearing a procuratory produced, the Lords refused to admit the same, after the judicial offer of the first, (the case

not being betwixt the wadsetter and reverser, but betwixt a creditor and donator); although it was pled in support of the first instrument, that the Lords had, in many cases, sustained requisitions or premonitions by procurators, without mention either of the production or reading thereof, when an anterior procuratory is produced in process, and when the procuratory was not called for; 12th January 1677, the creditors of Wamphray *contra* the Laird of Calderhall, observed by Stair.

Likewise the party authorized as procurator, should not only have a procuratory, but it is also incumbent on him to deliver his procuratory to the Notary, to the effect the Notary may read the same to the party, although the person to whom intimation is made should neither desire nor require to see the procuratory; for the Notary's reading thereof, without the procurator's order and direction, is not an act of his office, nor does it belong to him to be Notary to his own deed, but in so far as he has the preceding warrant of the requirer: wherefore it is necessary for the procurator to desire the Notary to read the same, upon which he ought to do it, and give instruments thereon. Nor will a probation by witnesses, that the procuratory was produced, be admitted; because such solemnities are not presumed, and cannot be proven by witnesses, but by valid and formal instruments; *Dirleton*, p. 211.

Requisitions made to minors must also be made to their tutors and curators personally, or at the market-cross, by letters of supplement; and although an instrument of requisition bears that it was made at the market-cross to tutors and curators, yet without these letters it will be null, as was found 15th June 1680, Gordon *contra* Earl of Queensberry, observed by Stair. But requisitions made to minors by their superiors, to come to treat, and confer upon a purpose of marriage, or the like, needs not be made to their tutors and curators, but is sufficient if made to

the minors themselves ; because the consent of tutors and curators is not requisite to the minor's marriage, and so they need not be required ; as was found 3d July 1622, French *contra* L. Thornidykes, observed by Durie.

Although what in the first part has been said anent the Notary's protocol, may be thought sufficient ; yet, by the following decision, Notaries will observe how cautious they ought to be in making out and signing the minute of any business, or inserting it in their protocol ; lest, by any unforeseen accident, they, by their negligence or omission, may render the whole business abortive, and thereby subject the party-employer to a great deal of fruitless charges and expenses. The case was thus.—A requisition from a debtor being made in presence of witnesses, and an instrument thereon required from a Notary, who wrote with his own hand a minute, but deceased while an instrument was to have been extended ; the requirer pursued the debtor for extending and making up the instrument ; and craved, that he (the debtor) and the witnesses might be examined ; and that, upon probation that the requisition had been made conform to the said minute, an instrument under the clerk-register's hand should be equivalent to one which the deceased Notary might have signed. The Lords refused the said desire, in respect the said minute was neither subscribed by the Notary, nor in his protocol. And Dirleton, in this decision, *decis.* 102, adds, that requisition, or such *actus legitimi*, cannot be proven but by instruments perfected as to all necessary solemnities, at least the minutes of the same under the Notary's hand. And though the debtor, or party concerned, may know that such deeds were done *de facto*, they may be ignorant, and are not obliged to declare whether they were legally done or not.

As to the particular sort of paper, or material on

which instruments of consequence are to be writ, the constitution of the Emperor Maximilian, mentioned above, ordains all notorial instruments to be written on parchment; but Gail, in his *pract. obs. lib. 1, obs. 119, n. 3*, adds an exception, unless by custom it be otherwise; because (saith he) such customs are allowed of in the sovereign court of the empire, called the *Imperial Chamber*, notwithstanding of that constitution.

Formerly in Scotland instruments of importance, such as seisins, &c. were either written on parchment or paper; for there never was a legal necessity to write them on either, until that by an act of the British Parliament, the 10th year of Queen Anne, it is statute, that "all instruments of resignation of any heritable right, as of houses, lands, tithes, mills, fishings, &c. all charters of resignation, confirmation, novodamus, or adjudication, retours of any service of heirs, precepts of clare constat, and seisins of all kinds," &c. shall be written upon stamped vellum, under the pain of nullity. On all which skins, whereupon the said evidents are ingrossed, there is now a duty of 7s. sterling paid to the crown, besides the price of the vellum.\*

There are in Scotland various kinds of instruments made use of; some of which are requisite and necessary for completing or extinguishing heritable rights; to the first of which, instruments of seisin and resignation relate; to the latter, instruments of premonition, consignation, requisition, and attendance. To the completing of personal rights relate instruments of possession, intimation of personal obligations, and instruments requiring persons to do, pay, or perform somewhat, or somewhat to be done by the taker of the instrument; as requiring sums due by bills or bonds, where there is a clause whereby the creditor is obliged to require his money; or instruments that

a debtor is to consign a sum due by bond, if the creditor refuse to accept of the sum ; amidst a number of others, as you will see by the sequel.

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## TITLE II.

### OF INSTRUMENTS OF SEISIN.

**A** FORMAL seisin (as defined by my Lord Stair) is,—  
 “ The instrument of a Notary-public, bearing the delivery of symbolical possession, by the superior or his bailie, to the vassal or his attorney, by delivery of earth and stone, and other symbols accustomed, upon the ground of the fee.”

Before the reign of King James I, the form of tradition of lands and houses, &c., was very uncertain. Some were of opinion, that possession could be given by the superior by staff and batton, at any place, and even not upon the ground of the lands ; others, that the delivery of the keys was sufficient ; and others thought, that possession could only be given in the superior's court ; and there were some who were of opinion, that it might be given before the other vassals, although not in the court.

Craig, *lib. ii, dieg. 7*, tells us the old form was, that the seller of lands or houses went out of the door, and the buyer entered ; so that the opening and closing of the door was a perfect seisin : that thereafter, tradition or seisin was given by delivery of a penny to the bailie : and adds, that long thereafter, even near to his time, the bailie's seal upon the superior's disposition, charter, or precept, was sufficient to instruct delivery of possession. Therefore, till the time of the said king, any charter, disposition, or precept, from a superior to a vassal, mentioning his heirs, or an herit-



able right, with true and real possession, without simulation, was sufficient to complete the fee.

Neither was there necessity, in any case, to prove the delivery, or the superior's entering the vassal in possession : but that was presumed from the possession itself : and, therefore, it need not be debated how the vassal entered into possession, or what warrant the bailie had to give him possession ; or what warrant the person had as procurator or attorney for the vassal, who received the possession for him ; for if the vassal was in the natural and civil possession, all these powers were presumed.

But the name of *Attorney*, (which is but seldom used with us, except in cases of seisin), together with the solemnities of seisins by the instrument of a Notary, was first introduced by the same King James, about the year 1430, he having brought them from England, (where he had been long captive), and the English from France, as Craig in the above-cited place relates.

By all which it appears, that at this time it would be of no effect to make a real right, without the attest of a Notary. In which sense the vulgar maxim is to be understood,—*Nulla sasina, nulla terra* ; which is not only necessary to the first vassal, but must be renewed to all his heirs and successors ; and, therefore, every heir must be infeft in fees ; otherwise, if they die uninfeft, they never attain the real right, but a possessory title to the fruits and rents, which will belong to their executors, in so far as unuplifted, from their predecessor's death till their own death or renunciation to be heir, and will be affected for their proper debts, which will not affect the heritage, or the next heir entering, who must enter to the defunct who died last infeft, and will be liable for his debts, but not for those of his apparent heir, who was never infeft : for the property or dominion of lands, or other subjects acquired by disposition, permutation, or any other singular title, is never understood, in the con-

struction of law, to be thoroughly invested in the person of the acquirer ; but, on the contrary, deemed to remain with his author until he has perfected his right by seisin. But by statute 1695, c. 24, it is declared, that an heir passing by his immediate ancestor, who had been three years in possession, and serving himself heir, or succeeding by adjudication on his own bond to one more remote, shall be liable for the debts and deeds of the interjected person, to the value of the estate to which he enters.

Seisin, when no latency or fraud can be qualified, may be taken at any time upon a lawful day ; for a seisin, although it bore to have been taken *circiter horam novam post meridiem*, was found valid ; 19th November 1679, Arnot *contra* Turner, observed by Stair.

When lands lie contiguously, one seisin serves for all, unless they be held by different superiors, or by different tenures ; and in either of these cases, the contiguity does not save the trouble of taking different seisins ; but if the lands be dispersed into distant places, or if the tenements are of diverse kinds, every distinct parcel, or particular tenement, requires a special seisin, unless they be united into a barony ; for, according to Craig, *lib. ii, dieg. 7, Quot sunt fundi discontigui, nec in charta uniti, totidem sasina debent intervenire, uti plenum transferatur dominium.*

But if they are either erected into the dignity of a barony, or united together in one tenement, one seisin at the place appointed by the union, or upon any part of the united lands, if no such place is mentioned, becomes sufficient for the whole. As to the advantages belonging to this union, see Craig in the above-cited place.

It hath been already told at what time seisins were introduced into this kingdom ; yet, from the narrative of the sixteenth *act, parl. 22, Ja. VI*, we may observe, that notwithstanding this way of transmission of property, by the attest of a Notary, was clearer, and more

secure for purchasers, than any formerly used; nevertheless, until the erecting of the public registers, which by this act are enjoined, purchasers were very unsecure, as from the act itself it appears; for it sets forth,—“That our Sovereign Lord considering the great hurt sustained by his Majesty’s lieges, by the fraudulent dealing of parties, who have annailzied their lands, and received great sums of money therefore; yet, by their unjust concealing of some private right formerly made by them, render the subsequent alienation, done for great sums of money, altogether unprofitable; which cannot be avoided, unless the said private rights be made public and patent to his Highness’s lieges: for remedy thereof, and of many inconveniences which may ensue thereupon, his Majesty, with advice and consent of the estates of parliament, statutes and ordains, that there shall be a public register, in the which all reversions, regresses, bonds, and writs for making of reversions, or regresses, assignations thereto, discharges of the same, renunciations of wadsets, and grants of redemption, and siclike all instruments of seisin, shall be registrate within sixty days after the date of the same,” &c. But this act is not extended to seisins and reversions within burgh, nor to reversions incorporated in the body of the infeftments.

And likewise, the act ordains the clerk to register these different evidents within the space of forty-eight hours next after the receipt thereof, and to ingross the whole body of the writ in the register, under the pain of deprivation: and within the same space to deliver to the presenter of the same their evidence, marked by him, with the day, month, and year of the registration, and in what leaf of the book the same is registrate. And all these securities are to be registrate either in the general register kept at Edinburgh, or in the particular register of every shire, kept at the several places named in this act. Sir George M’Ken

zie, in his observations on this part of the act, states a question, Whether, when lands lie within different shires, but are united ; if, in that case, they are to be registrate in the shire where the place lies at which the seisin is to be taken by the charter of union, or at all the places where the lands lie ? But I would think for shunning any inconveniency of this nature, the registration of such seisins in the general register at Edinburgh would be sufficient. However, I submit this to people of better judgment, especially seeing that, by a decision, 12th June 1673, *Faa contra Laird of Pourie*, observed by Stair, where this question occasionally occurred in the debate, the Lords left it undetermined. Sir George further adds, that since this act of parliament requires that all seisins, renunciations of wadsets, &c. shall be registrate, I think (says he) the booking of them is necessary. Nor is it sufficient (as some pretend) that they are produced and marked by the clerk ; because (as they say) the lieges can do no more, and they ought not to be punished for the clerk's negligence ; for if this were sufficient, no singular successor could be secure ; and the producer may pursue the clerk, if he book them not, since the act of parliament requires actual registration.

My Lord Stair, although he speaks nothing of a pursuit of this nature, nevertheless, in his *Instit. lib. ii, tit. 2, § 22*, states the question thus.—“ If the keeper of the register of seisins do, according to the custom, mark the seisin registrate, and attest the same by his subscription ; and yet, by negligence or fraud, shall not insert it in the register ; whether, in that case, a purchaser *bona fide*, for causes onerous, though infest thereafter, will be excluded by that prior infestment, marked by the clerk, and not recorded ? Though nothing has been observed in this case, yet if seisins marked registrate, though not found in the register, were found sufficient against singular successors purchasing thereafter, the de-

sign and tenor of this statute would be eluded; for the statute bears,—“If they be not registrate, (which must import their being inserted in the register), they are null.” And, therefore, though the keeper of the register hath attested such seisins to be registrate, yet truly they are not registrate; and no purchaser could be secure by inspection of registers, if a false attest of a clerk could exclude him, who oft-times is insolvent.”

Notwithstanding what is said by these two great lawyers, the parliament 1686, act 19, statuted, that when a writ to be registrate bears on the back, that it was presented and registrate, it be a sufficient security, albeit it be not found in the register; but that keepers of registers, omitting or negligent, be punished as forgers of public registers, and liable to the party's damage. But by act 18, *parl. 1, sess. 6*, K. William, the first part of this act is rescinded, and it is declared, that no seisin or other writ to be registrated be of force against any person save the granter, unless it be duly booked and inserted in the register; but the rest of the above act is ratified, and the heirs of negligent keepers made liable for damages, though no action was raised in the keeper's lifetime.

The thirty-second article in the *act of regulations, parl. 1672*,—“appointing the keepers of registers to have minute-books, and that the same be quarterly collationed with the registers, by the sheriffs and bailies where the registers are kept, and two justices of peace, under the pain of 100*l. toties quoties* they neglect to collation, and deprivation of the keepers, and paying damage to parties, in case they fail in their duty, &c.” having fallen in desuetude: therefore, the Lords, by their act of sederunt, 15th July 1692, ordained,—“That all keepers of registers should keep minute-books of their several registers; and that, immediately upon presenting any writs to be registrate therein, they should set down the name and designation of the person presenting, and the

day and hour when he presented the same, expressing the general designation of the lands or other rights; and that the minute of each writ presented should be signed by the presenter, and by the keeper; and that the keeper should insert the writs presented, in the same order as they are in the minute-book, under the pain of deprivation and damages, conform to the said act of regulations." And by *act 14, parl. 11, sess. 4*, William and Mary, this act of sederunt is ratified, and passed into an act of parliament; which doth fully complete the design of the acts for registration of seisins, reversions, allowances of appraisings and adjudications, hornings, inhibitions, and interdictions: all which may affect lands, not only against the granters, and their heirs, but even may militate against singular successors. And it is not possible for the keepers of the registers to alter these minute-books, in respect the minute of each right is signed by the presenter thereof. Which minute-book, by the above-cited act of parliament, is to be made patent to all the lieges *gratis*; which, in so far, may seem an alteration of the *act of regulations*, which grants an allowance in money for inspection of the register: but yet this is only making free the inspection of the minute-book. It is generally thought, that the sixty days within which seisins are to be registrate, are so to be counted only, that either the day upon which the writs are dated, or the day upon which they are registrate, must be free.

Notwithstanding what has been said, this necessity of registration is only introduced in favour of singular successors acquiring posterior rights; and, therefore, the nullity of not registration was not sustained at the instance of one who had no standing right in his person; 21st July 1638, Rowan *contra* Colvin, observed by Durie. Nor will this nullity be sustained in favour of the disponent or his heirs; for, *quoad* them, these rights are valid without registration: nor was the not registration of a seisin found invalid at

the instance of a son, who got the estate disposed to him by his father, with power to the father to burden it with a sum, since this son was found to be no third party; 27th February 1667, Countess of Carnwath *contra* Earl of Carnwath, observed by Stair.

By act of sederunt, 5th June 1661, we learn, that, during Cromwell's usurpation, the forming and writing of securities in Latin was discharged; for that part of the act which restores the old form runs thus.

—"And also considering, that, during the power of the late usurpers, the use and custom of writing in Latin was then discharged by the pretended commissioners for administration of justice; therefore, the said Lords ordain all charters, seisins, and other writs of that nature, as well such as pass the seals as otherwise, which were in use to be formed and written in Latin, to be continued in the same language as formerly, before the year 1652."

All instruments of seisin in decency ought to be extended in the same language with their warrant, it being unseemly to see Latin and English intermixed in the same writ.

Instruments of seisin proceed either upon precepts of seisin, commonly called *a precept of clare constat*, or upon precepts of seisin, contained in charters, dispositions, contracts, either of feu, wadset, or marriage, or on heritable bonds, or upon precepts forth of the chancery, upon retours directed to the sheriff-principal, or his deputies; which, by *acts 77, parl. 6, James V, and 15, parl. 18, James VI*, must be given by the sheriff-clerk as Notary; and he is not designed *Clericus dioceseos*, but *Clericus vicecomitatus*. It is further to be noticed, that this last-cited *act 15, parl. 18, Ja. VI*, narrates, that the above *act 77* appoints such seisins to be taken by sheriffs and their clerks; yet there is no mention made here of sheriffs, but only of sheriff-clerks: and yet the Lords of Session do now find seisins null *ope exceptionis*, unless they be given

both by sheriffs as bailies, and sheriff-clerks as Notaries.

The reason why seisins upon retours must be given by the sheriffs is, because some casualty belongs to the king out of the lands, conform to these precepts, for which ordinarily the sheriff takes security when he gives seisin : and at the delivery of the precept, there is a note made by the director of the chancery in the responde-book, bearing the sums for which the sheriff is to take security ; and he is to be charged, and counts therefore yearly in exchequer. See *act* 96, *parl.* 7, James V ; *act* 64, *parl.* 11, and *act* 124, *parl.* 12, James VI. And there likewise belongs to the sheriff himself a casualty, called a *seisin ox*.

When one is to consider if instruments of seisin be of a good style and form, containing all clauses necessary, let him know that,

1. All such instruments, having the common style, must, in the beginning, have the date, which must be a lawful one ; the name of the month, the year of God, and of the king or queen's reign.

2. That, in the presence of the Notary and witnesses, upon the lands particularly after mentioned, compeared personally the party himself, or his attorney, whose power was known to the Notary, holding in his hand the warrant of this seisin, which is either a contract or disposition, containing the precept of such a date, betwixt such and such parties ; and then insert the obligation to infest (*verbatim* as in the warrant) in such lands (*verbatim* as in the dispositive clause).

3. That this attorney presented the contract or disposition, containing the precept of seisin, to the bailie constitute, thereby requesting him to execute his office.

4. That the bailie was willing so to do, and, accepting, delivered the warrant to the Notary-public to be published to the witnesses.

5. That the Notary-public read the same according-



ly, and inserts in the instrument the precept *verbatim*. It is to be remembered, that if this precept be in the middle of a writ, you pass over all the other clauses, until *In witness whereof*, and then go on to the end thereof, subjoining the subscriptions.

6. That after so reading of the precept, the bailie delivered to the party, or his attorney, state and seisin of the lands, (which are here to be particularly narrated), and that by deliverance of the symbols of earth and stone, &c. to the attorney, at the place appointed by the precept; then specify how the lands are to be holden.

7. That the attorney asked instruments of the Notary-public; then the common style of the end of all seisins, which must bear the hour of the day.

*Lastly*, The attestation of the Notary, and his sign, and the subscription of four witnesses.

In order to illustrate this matter, and to make it the more plain to all Notaries, I shall follow out the several clauses of the above particulars, first inserting them as given by that great lawyer, my Lord Stair, in his *Institutes*, lib. ii, tit. 2.

1. It must bear the name of God, as its initial words.

2. The date, by the day, month, and year of God, together with the name of the king, and the year of his reign.

3. The appearance of the vassal, or his certain attorney, with the superior's bailie, in presence of the Notary and witnesses, upon the ground of the land, &c. disposed, having in his hand the warrant of the seisin.

The delivery of the precept, of seisin to the superior, if he be present, or, in his absence, to his bailie; whose warrant is secured, because there is a blank left in the precept for his name; in which blank, any person's name being filled up, is sufficiently authorized as bailie in that part specially constitute.

4. It bears the bailie's accepting of the precept,

and delivering it to the Notary, in presence of the witnesses.

6. The Notary's reading of the precept, and expounding it, if it be in Latin; and then the words of the precept must be engrossed.

7. The superior or his bailie's delivering of earth and stone of the land to the vassal or his attorney, bearer of the precept, or delivery of any other accustomed symbol, &c.

8. The attorney's requiring instruments.

9. It must bear, that these things were done upon the ground of the land, or other hereditament, and the hour of the day, before two witnesses, at the least, required thereto; which witnesses must now subscribe with the Notary, by act of parliament 1681.

Lastly, The attest of the Notary, bearing the authority of his creation; and that he was present with the witnesses, saying, *Vidi, scivi, et audiui*; that the things contained in the instrument were so done as is expressed therein; and that he took a note thereof, and thereupon drew a formal instrument, and inserted the same in his protocol; whereunto are adjoined his sign, his motto, contained in his commission, relating to his faithfulness and trust; and his name, or the initial letters thereof, as at the end of his act of admission.

The first two of these solemnities you have in the foregoing title upon instruments in general; the others take as follows.—When the seisin is given and taken by the superior's bailie and the vassal's attorney, it will be the same as in the fore-cited title to the words *personaliter comparuit*; and then say,—“*discretus vel generosus vir A de* ,\* *tanquam actor-*

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\* But if the vassal be present with the superior's bailie, the form will be thus.—“*Cui et in cujus favorem charta, dispositio, hæreditaria obligatio, vel aliud scriptum postea mentionandum, fuit factum et concessum.*”

natus et procurator pro et in nomine *B* de ,†  
 cujus actornati potestas mihi Notario publico sub-  
 scribenti lucide constabat; qui, cum discreto etiam  
 viro *D* de , balivo per sasinae præceptum sub-  
 scriptum ‡ specialiter constituto, ad § fundum terra-

† Formerly, purchasers were put to great expences, in regard that if either the disponent or purchaser died before resignation was made, or before seisin was taken upon the precept, the procuratory and precept were esteemed to become void, as being mandates failing with the mandant or mandatar: and, in case the disponent or purchaser happened to die, there was necessity for a process against the representatives of the disponent to enter to the fee, (by being served heir therein, and infest thereupon) . and to renew procuratories or precepts to the purchasers, their heirs or assignees: For remeid whereof, by *act 35, parl. 1693*, it is statute, That precepts of seisin formerly granted, or to be granted hereafter, shall be sufficient warrants for taking seisins, not only in favour of the party to whom granted, but also in favour of his heir served in general, or of his assignee by disposition and assignation, or by adjudication, as well after as before the death of the granter or receiver, or both, provided the instrument of seisin taken after the death of the receiver express and therein deduce the right of the person to whom seisin is given; otherwise to be null. But from this act precepts of *clare constat* are excepted; because, by keeping up these, the casualties due to the superior might be shunned. Wherefore, if the seisin be given to the attorney of the heir of the person in whose favour the right was granted, upon which no infestment followed, you must say,—“*hæredis deserviti et retornati quondam C de , sui patris modo infra mentionando.*” Or, if the seisin be given to an assignee, you must say,—“*tanquam jus per dispositionem et assignationem modo subtus mentionando, habens ab C de .*”

‡ If it be a precept of *clare constat*, add,—“*vulgo præceptum de clare constat vocatum.*”

§ If the lands lie discontinuous, and there be a dispensation in the charter for taking seisin at one place for the

rum, tenementorum, molendinarum, aliorumque subtus mentionatorum, accessit."

3. Here likewise is inserted the narrative of the warrant upon which seisin proceeds, whether it be a precept out of the chancery upon a special retour, a precept of *clare constat*, a charter under the great seal, or a charter granted by a subject, or a disposition, heritable bond, contract of feu, wadset, or marriage, &c. Of all which more fully hereafter. But if the warrant of your seisin be a contract, you must remember to keep out these words, *cui et in ejus favorem charta, &c.*

4. After narrating the warrant, follows,—“Quod quidem sasinæ præceptum \* dictus A procurator, et in nomine præfati B de prædicto D de balivo per dictum præceptum ad effectum subtus mentionatum specialiter constituto, ut dictum est, exhibuit et præsentavit, eundemque obnixe rogavit, ut suum balivatus officium in eodem sasinæ præcepto contentum debitæ executioni demandaret.”

5 and 6. Essentials will run thus. — “Qui quidem balivus, sciens et percipiens dictum desiderium fore justum, rationique consonans, dictum præceptum † omni qua decuit reverentia in manibus suis recepit,

whole lands, &c. say,—“ad manerii locum seu mansionis domum de , tanquam locum designatum virtute dispensationis contentæ in charta infra mentionata, pro capienda sasina pro integris terris tenementis, molendinis, aliisque inibi et subtus mentionatis.”

\* Or if it be a precept of *clare constat*, add, as before; or if a charter, disposition, or contract,—“Quam quidem chartam, dispositionem, vel hæreditariam obligationem, vel quem quidem contractum, in se continentem dictum sasinæ præceptum;” or if it be one served heir in general, or an assignee, that is, infest,—“Una cum dicto generali retornatu seu assignatione prædicto.”

† Vel,—“chartam, hereditariam obligationem, aut contractum.”

mihiq[ue] Notario publico subscribenti perlegendum, publicandum, et in vulgari sermone exponendum, coram testibus astantibus, dedit, tradidit, et deliberavit. Quod feci: cujus quidem præcepti sasinæ tenor sequitur." [Here insert the precept of seisin as in the charter, and the witnesses as in the warrant].

7. Essential, mentioned above, is as follows.—  
 "Post cujus quidem \* præcepti sasinæ suprascripti perlectionem, publicationem, et expositionem, præfatus D, balivus antedictus, virtute ejusmodi et officii balivatus sibi in hac parte per idem commissi,† statum, sasinam hæreditariam, pariter et possessionem actualem, realem, et corporalem, ‡ totarum et integrarum prædictarum terrarum, decimarum, molendinarum, salmonum piscariarum, alio-

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\* Vel,—“chartæ, dispositionis, &c. præceptique sasinæ inibi contenti.”

† If seisin be given to an heir or assignee, add,—“secundum tenorem acti parliamenti.”

‡ If seisin be given upon an heritable bond, say,—“totius et integri dicti annui redditus, qui pro tempore dictæ principalis summæ monetæ prædictæ per leges et acta parliamenti hujus regni correspondebit, annuatim levandi et percipiendi, ad duos solutionis terminos, Festa scilicet Pentecostes, et Sancti Martini in hieme, per æquales portiones, de terris aliisque suprascriptis, modo super mentionato;” and add,—“redimabili omni modo dicto annuo redditu et sub reversione modo prolixè mentionato in dicta hæreditaria obligatione;” or you may insert the sum upon which the annualrent is redeemable, and the way and manner of redemption, as in the heritable bond. But if seisin be given of lands, or any other subject under reversion, say,—“redimabilibus omni modo et sub reversione dictis terris aliisque suprascriptis per dictum C, a præfato B, modo et secundum tenorem clausulæ reversionis contentæ in dicta charta;” or you may insert the sum, with the way and manner of redemption, as in the clause of reversion.

rumque suprascriptorum, cum pertinentibus, jacentium ut prædictum est, memorato *A*,\* per terræ et lapidis fundi prædictarum terrarum, manipuli frumenti crescentis vel graminum pro decimis, clap et happer dictarum molendinarum, et retis pro dicta salmonum piscaria † ut moris est, dicto *A*, tanquam actornato antedicto, traditionem et deliberationem, secundum tenorem dicti præcepti ‡ in omnibus punctis, tradidit et deliberavit, nemine contradicente aut in contrarium opponente."

8. Essential, as above mentioned, is the attorney's requiring instruments in the following manner.—  
 "Super quibus omnibus et singulis præmissis, dictus *A*, tanquam actornatus, et in nomine prædicto, unum vel plura instrumentum seu instrumenta, publicum vel publica, a me Notario publico sibi fieri petiit."

9. Requisite of a formal seisin will be in the following words.—  
 "Acta erant hæc super solum prædictarum terrarum et molendinarum, horas inter et ante (vel post) meridiem, die mensis, anno Domine regnique regis quibus supra, præsentibus ibidem *H*, *A*, *B*, et *C*, testibus ad cuncta præmissa specialiter vocatis, pariterque rogatis et requisitis."

The last essential, to complete a formal seisin, is the attestation of the Notary, bearing the authority

\* If the seisin be given to the heir himself, as heir served and retoured, add,—"*hæredi deservito et retornato præfato C*;" or, if to an assignee,—"*assignato, ut dictum est, constituto per dictum C*."

† If seisin is given for annualrent, add,—"*et unius denarii monetæ*."

‡ Or,—"*de clare constat, chartæ dispositionis. &c. præceptique sasinae inibi contenti*." If to an heir or assignee,—"*generalis retornatus seu assignationis*."

If the lands lie discontinuous, and there is no dispensation, there may be added,—"*respective et successive unum post alterum*."

of his creation, &c. commonly called *the Notary's doquet*; a full copy of which you have in the part of this treatise, p. 27.

Having now given in Latin all the requisite clauses, conform to the above ten essentials, mentioned in my Lord Stair's *Institutions*, I shall here at large present the reader with the same in English.—

“IN the name of GOD, *Amen*. Be it known to all men by this present public instrument, that upon the day of \_\_\_\_\_, one thousand eight hundred and ten years, and of the reign of our Sovereign Lord George III, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, the 50th year, in presence of me Notary-public, and witnesses subscribing, compeared personally \* an discreet man *A* of \_\_\_\_\_, † as procurator and attorney for and in name of *B* of \_\_\_\_\_, whose power of procuratory was clearly known to, and understood by me, Notary-public subscribing; who also, with another discreet man, *D* of \_\_\_\_\_, bailie, by

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\* Or,—“*F*, bailie in that part specially constitute by the precept of seisin under written; and sicklike, compeared personally *G*, as procurator and attorney for, and in name and behalf of *H*, whose power of procuratory was sufficiently known,” &c.

† But if the vassal be personally present, say,—“to whom, and in whose favour the precept of seisin, commonly called a precept of clare constat, charter, disposition, heritable bond, or other writ, &c. after mentioned, is made and granted.” If an infeftment be given to an heir served and retoured, add,—“heir served and retoured, in manner after mentioned to unquhile \_\_\_\_\_ his father.” Or if to an assignee,—“as having right by disposition and assignation, in manner after mentioned, from \_\_\_\_\_.” But if seisin be given in implement of a contract, you must take care to keep out these words,—“to whom, and in whose favour,” &c.

the precept of seisin under written, specially constitute, passed \* to the ground of the lands, tenements, mills, and others after mentioned; *having and holding* in his hands the said † precept of seisin, commonly called a precept of *clare constat*, made and granted by an honourable gentleman, J of , in favour of the said B, as heir to the said umquhile C, his father, of *all and haill* the lands, &c. and others under written, of the date, tenor, and contents after mentioned. Which precept of seisin, commonly called a precept of *clare constat*, the said A, as procurator for, and in name of the foresaid B of , exhibited and presented to the said D, bailie, by the said precept of seisin, to the effect after mentioned, specially constitute, as said is; humbly requiring him to proceed to the due execution of his office of bailiery thereby committed to him. Which request and desire the said D, bailie, finding to be just and reasonable, he accepted of the said precept, and took it in his hands with all reverence as becometh, and delivered the same to me, Notary-public subscribing, to be read and published in presence of the witnesses subscribing. All which, accordingly, I did. Of which precept of seisin, commonly called a precept of *clare constat*, the tenor follows. [*Here must be inserted the haill precept of clare constat verbatim, or other precept of what kind soever, subjoining the subscriptions, as they are in the precept, or other warrant.*] After reading and publishing of the which precept of

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\* Or,—“to the mansion place of , as the place appointed, by virtue of the dispensation contained in the charter after specified, for taken seisin of the haill lands, tenements, mills, and others therein and after mentioned.”

† Or,—“charter, disposition, heritable-bond, or contract, containing therein the said precept of seisin under written.” I shall not here subjoin any forms of the warrants upon which seisins proceed, seeing I have set a title apart peculiarly for them.



*clare constat*, the said *D*, bailie foresaid, by virtue thereof, and of his office of bailiery in that part specially committed to him,\* gave and delivered to the said *A*† heritable state and seisin, real, actual, and corporal possession, of *all* and *baill* ‡ the lands, teinds, mills, salmon-fishing, and others above written, with their pertinents, lying as said is;§ and that by deliverance to the said *A*, as procurator, and in name foresaid, of earth and stone of the ground of the said lands, an handful of growing corn or stubble for the said teinds, clap and happer for the said mill, net for the said salmon-fishing,|| as use is, after the form and tenor of the said precept of *clare constat*, in all points, none opposing or contradicting the same. Where-

\* If seisin is given to an heir, add,—“conform to the act of parliament.”

† And if the vassal be personally present, and be heir served and retoured, add,—“heir served and retoured to the said .”

‡ If seisin be given upon an heritable bond, add,—“the foresaid annualrent of three hundred merks money foresaid, or such an annualrent as by the laws and acts of parliament for the time shall effeir and correspond to the said principal sum of six thousand merks money foresaid, yearly to be uplifted and taken at the terms of payment, and by equal portions, and forth of the lands and others above written, in manner particularly above mentioned.”

§ And if it be for annualrent, add —“redeemable always, and under reversion, the lands and others above written, in manner at length mentioned in the said heritable bond.” But if seisin be given to any subject under reversion, say,—“redeemable always, &c. by the said *C* from the said *D*, in manner, and conform to the clause of reversion contained in the said charter.”

|| And if seisin be given for annualrent, add,—“and an penny money for the said annualrent.” If the lands lie discountiguous there may be added,—“respectively and successively the one after the other.”

upon, and all and sundry the premises, the said *A*, procurator foresaid, asked, required, and took instruments, one or more, in the hands of me the said Notary-public subscribing. These things were done upon the ground of the foresaid lands and mills, betwixt the hours of        and        before (or after) noon, place, day, month, year of God, and of the king's reign, respectively above written, before and in presence of *M*, *N*, *O*, and *P*, witnesses to the haill premises specially called and required." [*Follows the Notary's doquet, &c.*]

*Follows the Style of an Instrument upon a Charter.*

"IN DEI nomine, Amen. Per hoc præsens publicum instrumentum cunctis pateat evidenter, et sit notum, quod, anno incarnationis Dominicæ millesimo octingentesimo decimo, mensis vero die        et regni S. D. N. Georgii Tertii, Dei gratia Britanniarum Regis, Fideique Defensoris, anno quinquagesimo, in mei Notarii publici et testium subscribentium præsentia personaliter comparuit, super fundum terrarum et baroniæ de *B*, apud manerii locum ejusdem, tanquam locum designatum pro sasina de integris terris, baronia, aliisque subtus specificatis, capienda, *A* de *B*; habens et in suis manibus tenens quandam chartam, præceptum sasinæ subinsertum in se continentem, factam, datam, et concessam, per dictum S. D. N. Regem, sub suo magno sigillo, cum consensu Dominorum ipsius thesaurarii et scaccarii prædicti regni Scotiæ, memorato *A* de *B*, heredibus suis et assignatis quibuscunque, hereditarie et irredimabiliter, de totis et integris terris," &c. [Here take in the lands as in the *Dedimus* of the charter, continuing on till the clause of *Pertaining*, which begins, *Quæ quidem*; which lands must also be inserted *verbatim* in the seisin as in the charter, till you come either to a *Novodamus*, or some other clause

before the *Tenendas*: and if there be a *Novodamus* in the charter, or an erection into a barony, these, on the like clauses, must be briefly mentioned. In a seisin following upon a charter wherein both these clauses were contained, they were briefly thus expressed.]—"Quæ quidem charta continet novam donationem omnium et singularum prædictarum terrarum, decimarum, aliorumque præscriptorum, et unionem et erectionem earundem in unam integram et liberam baroniam, nuncupatam baroniam de *B*; atque unica sasina, nunc per dictum *A*, et per ejus heredes et assignatos omni tempore futuro, capienda apud dictum manerii locum de *B*, vel super solo alicujus alterius partis terrarum supra mentionatarum, per traditionem terræ et lapidis fundi, declaratur stare et sufficientem esse sasina pro integris terris, decimis, jure patronatus, aliisque supra recitatis, sine ulla alia speciali aut particulari sasina, apud aliquam aliam partem seu locum capienda, non obstante quod eadem sint diversæ denominationis, ac contigue minime jaceant; ac etiam continet ratificationem omnium chartarum, dispositionum, et infeofamentorum, aliorumque jurium et securitatum factarum dicto *A*, vel , vel alicui eorum, vel quibuscunque eorum prædecessorum aut auctorum, terrarum aliorumque superscriptorum, in omnibus punctis, clausulis, et articulis eorundem: Tenendas de dicto S. D. N. Rege, et successoribus suis, pro solutione taxatarum, devoriarum, wardæ, non-introitus, relevii, et maritagii, nec non feudi-firmæ, in dicta charta mentionatorum." [This is the charter mentioned in the seisin; after which is subjoined the style of the seisin immediately, in this manner.]—"Quam quidem chartam prænominatus *A*, Titio, vicecomiti in hac parte comitatus de *E* per præceptum sasinae subinsertum specialiter constituto, præsentavit, ipsumque rogavit, ut, quatenus inibi continebatur, debita executioni demandaret; cuiquidem rogatui, tan-

quam in se justo et rationi admodum consentaneo, dictus vicecomes obedire volens, eandem chartam in manibus suis recepit, et mihi Notario publico perlegendam, publicandam, et in vulgari, astantibus testibus, explanandum, tradidit. Quod feci: cujus vero præcepti tenor sequitur: Vicecomiti," &c. [Here take in the precept *verbatim* as in the charter, to the very end thereof, subjoining the subscriptions of the director to his Majesty's chancery, and that of the keeper of the great seal, thus.—"*Written to the great seal, and registrate the      day of      , one thousand eight hundred and      .* Sic subscribitur, *W. C. Seated at Edinburgh, the      day of      one thousand eight hundred and      .* Sic subscribitur, *A. R.*" Then follow forth the style of the seisin thus.]—"Post cujus quidem chartæ, præceptique præinserti in eadem contenti, perlecturam, publicationem, et in vulgari, astantibus testibus, explanationem dictus Titius, vicecomes in hac parte antedictus, virtute et vigore ejusdem, ac sui vicecomitatus officii sibi incumbentis, sasinam totarum et integrarum prædictarum terrarum et baroniæ de *B*, cum omnibus earundem pertinentiis, unitis, comprehendentibus et jacentibus ut prædicitur, memorato *A*, personaliter præsentem et acceptantem, per terræ et lapidis fundi prædictarum terrarum et baroniæ de *B*, apud manerii locum ejusdem, in ejus manibus, ut moris est, traditionem et deliberationem, secundum formam et tenorem antedictæ chartæ, dedit, donavit, contulit, et deliberavit. Super quibus omnibus et singulis præmissis, dictus *A* a me Notario publico subscribente sibi fieri petiit hoc præsens publicum instrumentum, seu instrumenta publica, unum vel plura. Acta erant hæc super fundum dictarum terrarum et baroniæ de *B*, apud manerii locum ejusdem, hora      post meridiana, aut eo circa, sub anno, die, mense, et regis regno præscriptis, præsentibus ibidem probis viris *D* et *E*, *F* et *G*, testibus in præmissis rogatis, pariterque vo-

catis et requisitis." [Then is subjoined the Notary's doquet, &c.]

In old style the compearance is,—“ In mei Notarii publici et testium subscriptorum præsentis personaliter comparuit probus et discretus vir *A*, vicecomes de            in hac parte per sasinæ preceptum subscriptum specialiter constitutus, et ad solum et fundum terrarum subtus specificatarum accessit; et ibidem quoque comparuit honorabilis et discretus vir *B*, et quoddam sasinæ preceptum dicti S. D. N. Regis, pergamena scriptum, sub testimonio sui magni sigilli, ut apparuit, roboratum et sigillatum, præfato *A*, vicecomiti in hac parte antedicta præsentavit, eum requirens quatenus ea quæ in eadem continebantur debitæ executioni mandaret. Qui vero vicecomes omni reverentia debita hujusmodi sasinæ præceptum ad manus recepit, idemque mihi Notario publico subscribenti perlegendum et publicandum tradidit: cujus sasinæ præcepti, in dicta charta contenti tenor de verbo in verbum sequitur, et est talis,” &c. So followed the precept of seisin, which, in old times, was little less than the charter now-a-days, differing from it in this, that in the precept of seisin were mentioned all other clauses besides the *Tenendas* and *Reddenda*; and then the style went on as the other.

It often occurs, that before infeftment is taken on a charter, the lands and charter are conveyed to another in whole or in part, and infeftment taken in the name of the disponent; an example of which shall be given in one instance, leaving it to the Notary to adapt the narrative to the nature of the infeftment he is to take in other instances.

*Instrument of Seisin upon an Assignment to an Unexecuted Precept in a Crown-Charter.*

“ IN DEI nomine, Amen. Per hoc præsens publicum instrumentum, cunctis pateat evidenter et sit notum, quod anno incarnationis Domini millesimo octingentesimo et decimo, regniue S. D. N. Georgii Tertii, Dei gratia Britanniarum Regis, Fideique Defensoris, anno quinquagesimo mensis vero die

In mei Notarii publici, et testium, subscriptientium præsentia personaliter comparuit tanquam procurator et actornatus, pro et in nomine *A*, cujus potestas procuratorie, mihi Notario publico lucide constabat, et cum discreto viro tanquam vicecomite in hac parte vicecomitat. de

per præceptum sasinæ subinsertum specialiter constitut. ad mansionis domum de virtute clausulæ dispensationis infra mentionat. nobiscum accessit; habens, et in suis manibus tenens quandam chartam, [*Here narrate the charter*], ac etiam habens, et in suis manibus tenens dict.

procurator ante dict. quandam dispositionem de data fact. et concess. per dict. *B*, ad, et in favorem dict. *A*, et sui ipsius: Per quam dict. *B*, propter causas inibi specificat. *vendidit, alienavit, et disposuit*, ad et in favorem dict. *A*, in vitali redditu, et dict. *B*, ejusque hæredum et assignatorum quorumcunque, in feodo, hereditarie et irredimabiliter, totas et integras dict. terras et tenandriam de aliaque, cum decimis et pertinen. particulariter suprascript. jacen. et descript. ut prædicitur; cum omni jure, titulo, et interesse clameo juris proprietatis, vel possessionis, quæ dict. *B*, vel ejus predecessores vel auctores habuerunt, vel ullo modo ad prædict. terras, aliaque, cum pertinen. earund. habere, clamare, vel pretendere potuerunt; prout dict. dispositio in se continen. obligationem infeodare modo inibi mentionat. clau-

ulam absolutæ warrantizationis ; sed sub exceptione jurium feodaliū dict. terrarum, sicut inibi mentionat. assignationem ad scripta et evidētiās dict. terrarum aliarumque, et particulariter in et ad dict. chartam, sub magno sigillo, in favororem dict. *B*, supra recitat. et præceptum sasinæ inibi content. ad effectum ut virtute ejusdem et dict. præcepti sasinæ adhuc unexecut. dict. *A* in vitali redditu, et dict. *B*, ejusque prædict. in feodo, promptius infeodarentur et sasirentur in premissis, et quasdam alias clausulas latius proportat ; quamque chartam dict. præceptum sasinæ in se continen. cum dict. dispositione a dict. *B*, specialiter assignan. dict. *A*, pro ejus interesse prædict. in et ad dict. cart. et præcept. sasinæ content. dict. actornatus antedict. exhibuit et presentavit dict.

vicecomiti antedict. eumque rogavit ad executionem officii illi per dict. sasinæ præceptum commissi, debito procedere ; quemque rogatum dict. vicecomes antedict. percipiens esse

justum rationique consonantem, dict. chartam et dispositionem manibus suis accepit, et mihi Notario publico subscriben. per me perigend. ac testibus aliisque astantibus vulgari sermone explicand. tradidit ; quod feci, et cujus præcepti sasinæ content. in dict. charta tenor sequitur, et est talis [*Here take in the precept from the charter at full length, with sealings and subscriptions, &c.*] Post cujus cartæ antea recitat. præceptique sasinæ inibi content. et antea insert. et dict. dispositionis specialiter assignan. dict. *A*, pro ejus interesse prædict. in et ad dict. chartam et præceptum sasinæ inibi content. publicationem perfectionem, et in vulgari sermone explicationem præfat.

vicecomes antedict. virtute dict. chartæ et præcepti sasinæ inibi content. *didit, tradidit, et deliberavit* statum et sasinam in vitali redditu, pariterque possessionem realem, actualem, et corporalem, totarum et integrarum dict. terrarum, aliorumque, cum decimis et pertinent. earund. particulariter supra specificat. jacen. et descript. modo antea mentionat. præfato *A*, pro

ejus vitalis redditus usu solummodo, per traditionem terræ et lapidis fundi dict. terrarum, aliorumque dict. actornato antedict. pro et in nomine dict.

*A*, secundum formam et tenorem dict. chartæ præceptique sasinæ inibi content. et dict. dispositionis, in omnibus nemine contradicente, seu in contrarium opponente. Super quibus omnibus, et singulis præmissis dict. actornatus antedict. instrumen-

tum a me Notario publico subscribend. sibi fieri petiit. Acta erant hæc omnia super fundum dict. terrarum, apud dict. mansionis domum de virtute dispensationis in dict. charta specificat. et content. modo mentionat. in hoc instrumento debite et legitime in omnibus, inter horas *12* et *12* die mensis, anno Domini regnique regis supra specificat. præsentibus et testibus ad præmissa specialiter rogatis et requisitis "

An instrument of seisin to one in liferent, and another in fee, carries two seisins; and the clause of seisin must be thus.—“ Gave and delivered liferent state in seisin, and also possession of the annualrent above specified, yearly to be uplifted at the terms above rehearsed, forth of the lands and others above written, or any part thereof, lying as is above mentioned, to the said *A*; and likewise heritable state and seisin of the foresaid annualrent, to be uplifted as is above expressed, to the said *B*, by deliverance of earth and stone of the lands above rehearsed, and an penny, as use is, to the said *A*, personally present, and receiving the same, for himself, and as attorney, and in name and behalf of his daughter above mentioned: To be holden,” &c. Here the literenter compeared personally for himself, and attorney for the fiar.

Besides the way of giving seisins above mentioned, they are given *propriis manibus* and are of two sorts. In the first the warrant of seisin is therein narrated, as in other seisins, only the precept of seisin is not *verbatim* engrossed; but, to supply this defect, the



giver *propriis manibus* subscribes it, in presence of the witnesses not only to the instrument, but also to the parties subscription. The second does not narrate the writ at all, only the Notary makes mention, that seisin is given in supplement of a writ, which he condescends on by the date; neither does the granter subscribe the same. *Craig, lib. 2, dieg. 7*, speaking of seisin *propriis manibus*, says,—*Ea quæ propriis domini manibus sit, si charta, quæ conditiones continet, non appareat, durissimam secum trahit conditionem et interpretationem; nam accipientem semper in servitium militare obligat, cum heredis et terrarum custodia, et ejus maritatione.* The first of these being the most complete, I shall here take occasion to consider its formalities only, noticing where it differs from those mentioned by my Lord Stair.

In the first two it will be the same; and in the third, viz. the narrating of the writ, in supplement of which seisin *propriis manibus* is given, the difference is not great from other ordinary seisins; only the date is inserted in the beginning thereof; whereas other narratives, where the precept of seisin (which is generally in the end of the writ) is engrossed, refers to the date. The date is inserted in this manner —“*Habens, &c. quandam chartam, dispositionem, &c. de data* \_\_\_\_\_, *factam et concessam per dictum A de* \_\_\_\_\_.” Or in English thus.—“Having, &c. of the date the \_\_\_\_\_ day of \_\_\_\_\_, made and granted by the said *A* of \_\_\_\_\_.”

As to the fourth, viz. the delivery of the writ, in supplement whereof seisin is given, there is some variation from what is above related; wherefore I have set it down as follows.—“*Quam quidem chartam, vel dispositionem, &c. dictus B exhibuit et præsentavit præfato A personaliter præsentanti, eundemque obnixè rogavit quatenus procederet ad dandum (ex propriis suis manibus) statum, satisfactionem,*” &c. as before. Or thus in English.—“Which charter, or disposition, &c. of the date,

tenor, and contents above written, the said *B* exhibited and presented to the said *A* personally present, humbly requiring him, in implement, and in consequence thereof, to proceed to the giving (*ex propriis suis manibus*) heritable state and seisin," &c.

As to the fifth and sixth essentials, there is no difference in this seisin from those above, only putting in the superior's name in place of the bailie's, and leaving out the words, *omni qua decuit reverentia*; and observe what was formerly said, that as the writ is mentioned in the beginning, you do not add *cujusquidem præceptum*.

The seventh essential will be the same as above, only in place of *præcepti*, say *chartæ*, &c. as the writ is; and, after *expositionem*,—"præfatus *A*, pro observatione et impletione ejusdem, dedit, tradidit, et deliberavit dicto *B* (*ex propriis suis manibus*) statum, sasinam," &c.: the rest of the seisin as before.

It has been told, that the giver of this kind of seisin subscribes the same; and this seems to have been introduced from the analogy of *act* 38, *parl.* 6, and *act* 81, *parl.* 9. Q. Mary, anent subscribing of instruments of resignation: and this subscription is adjoined after the words, "*rogatis et requisitis*," in this manner.—"*Et similiter dictus A, in signum et testimonium veritatis omnium et singulorum præmissorum, hoc præsens publicum instrumentum subscriptione et chirographo suo munivit, loco, die mensis, annoque Domini suprascriptis, coram testibus supra designatis et subscribentibus.*" Or thus.—"*As also, the said A, in sign and token of the verity of all and sundry the premises, has instantly subscribed this present public instrument, place, day, month, year of God, and of his Majesty's reign particularly above mentioned, before the witnesses above designed, and hereto subscribing,*" &c. The tenor of the other kind of seisin will be the same as above, only, at the inserting of the compearance of the person who gives seisin *propriis manibus*, after

the word *comparuit*, add,—“super solo terrarum, tenementorum, &c. aliorumque infra scriptorum, honorabilis et generosus vir *A* de , donator et concessor chartæ (vel dispositionis, &c.) postea mentionatæ, cum alio discreto viro *E*, \* tanquam procuratore, &c. et ibidem præfatus *A*, pro observatione et impletione dictæ chartæ, et obligationis ad infeodandum inibi contentæ, ex ipsius parte, (propriis suis manibus), tradidit et deliberavit statum,” &c. And after the words, (in the end of the seventh essential of a formal seisin), *ut moris est*, add,—“super solo earundem, in manibus dicti *E*, procuratoris pro et in nomine dicti , nemine contradicente aut in contrarium opponente, secundum formam et tenorem dictæ dispositionis terrarum aliorumque suprascriptorum, et obligationis ad infeodandum inibi contentæ, factæ et concessæ per dictum *A*, ad et in favorem dicti , quæ est de data , die mensis , in omnibus punctis et articulis ejusdem. Super quibus omnibus,” &c. as above.

If the seisin be formed in English, it will be the same as in the above example, to the words, *appeared personally*; and then add,—“upon the ground of the lands, tenements, &c. and others under written, an honourable and discreet gentlemen, *A* of , granter and subscriber of the charter (or disposition, &c.) after mentioned, with another discreet gentleman, *E* of , as procurator for and in name of , in whose favour the said charter, disposition, &c. is made and granted; and there the said *A*, for implement and fulfilling his part of the said charter, and obligation to infeft therein contained, did, *ex propriis suis manibus*, give and deliver heritable state and seisin,” &c. And after the words, *as use is*, in the end of the seventh essen-

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\* Or, if the person to whom seisin is given be present, say,—*cui et in cujus favorem dicta charta est facta et concessa.*

tial, add,—“ upon the ground thereof, in the hands of the said *E*, as procurator, and in name of the said *E*, none opposing or contradicting the doing thereof, after the form and tenor of the said charter, disposition, &c. and obligation to infest therein contained, of the lands and others above written made and granted by the said *E*, to the said *A*, of the same, which is dated the *day* *year*, in all points Whereupon, and upon all and sundry the premises,” &c. as above.

I find in the protocol-books of several Notaries written in the reign of K. James VI, that in seisin *propriis manibus* they do not mention the date of the writ in implement of which seisin is given; but only, after the words *ex propriis suis manibus*, add *secundum tenorem chartæ desuper confectæ*: as also, in the said books I find a clause very frequent in these sort of seisin inserted after these words,—“ *jacentes infra vicum comitatum de* *;* *et ibidem dictus A*, *non vi aut metu ductus, aut errore lapsus, compulsus aut coactus, sed sua mera, pura, libera, et spontanea voluntate, propriis suis manibus, statum, satisfactionem,*” &c.

My Lord Stair, *lib. 2, tit. 2, § 19*, says. That when the superior immediately gives seisin to the vassal, in that case the Notary's warrant is sufficiently instructed by the seisin, and by the disposition, contract of alienation, or bond: or when the seisin is *propriis manibus secundum chartam conficiendam*, if a charter thereafter made be shown; as a seisin *propriis manibus*: by a father to his son, reserving the father's life rent, was found valid against a second wife's infirmament granted for a competent tocher, being administered by a bond granted by the father, of the same date with the seisin, obliging him to warrant the same; 1<sup>th</sup> February 1669, *Buchan contra Tait*, observed by Stair. But a seisin *propriis manibus* of tenement within burgh, granted by a father to his son for love and favour, bearing resignation by the

father in a bailie's hand, was found not to instruct without a warrant or adminicle in writ; 11th February 1681, *Irvine contra Corsan*, likewise observed by Stair.

But seisins *propriis manibus* granted by husbands to their wives, in contemplation of marriage, having no adminicle but the marriage, the Lords according to the different cases, have sometimes sustained them when they were suitable to the parties, and not exorbitant, and where the question was only with the husband's heir, or an appriser.

Nevertheless such seisins, without an adminicle in writ, are very ready to be improven; as may be learned from the following decision, observed by Stair, 19th June 1668, the relict of *Galrigs contra Wallace of Galrigs*.—The relict of *Galrigs* pursued for maills and duties upon her seisin given *propriis manibus*. It was alleged for the defender, No process because the seisin is but *a seriso No arii* without a warrant, there being neither a contract, nor obligation to give such a seisin. It was answered, That instruments of seisin, given to a wife *propriis manibus*, have a sufficient adminicle and presumption by the marriage, and the duty of the husband to provide the wife; especially where there is no contract, nor other provision; but most of all where the wife renounced her jointure she had with a former husband, in favour of the granter of the seisin and his creditors; which is a strong presumption he would give her something in lieu thereof. The Lords sustained the seisin. But thereafter, 9th January 1669, *Galrigs* offered to improve the seisin by the witnesses inserted, which being four, two of them deponed positively, that they never were witnesses to a seisin given by *Galrigs* to his wife; and the third deponed, that he remembered not that he was a witness: the fourth deponed, that he was witness; but said, that this seisin was in summer, whereas it bore to be in winter: the Notary abode by the seisin. The Lords found the seisin improven,

but would not examine the Notary, nor any other person, mainly in consideration that the seisin was *propriis manibus*, without any other adminicle; but if there had been an adminicle, the Notary and one of the witnesses being positive, the seisin would not have been improven; for where there is a warrant, mediate or immediate, providing a seisin be given, *quod fieri debet, facile præsumitur*: and, therefore, the witnesses not remembering, or denial, will hardly improve such seisins, unless their testimony were positive, giving special circumstances of their denial as being in another country, or far distant place, at that time, if the truth of that were otherwise instructed. But the general denial to be witnesses, could import no more than *non memini*; and, therefore, an adminicle in writ, with the protocol, or oath of the Notary, if he were alive, and especially if possession followed for some time; these would more strongly approve than the not remembrance, or general denial of the witnesses inserted, would improve. By what has been said, Notaries will be cautious not to copy after this last form.

Having now finished the matter of seisins of lands, I shall, in the next place, for the benefit of such as are clerks to royal burghs, who also ought to be Notaries, proceed in seisins in burgage-tenements. Formerly these seisins, by the constant custom of the burgh of Edinburgh, were written in Latin, although the warrant on which they proceeded was in English; but that practice is now almost laid aside: however, examples shall be given in both languages.

## TITLE III.

## OF INSTRUMENTS OF SEISIN IN BURGAGE-TENEMENTS.

NOTWITHSTANDING that infeftments in burgage-tenements participate as much of the nature of resignations as of seisins, yet, seeing they are best known by the last name, I thought it proper to insert them in this place.

Seisins in burgage-lands, by *act 2<sup>d</sup>, parl. 1, James VI*, can only be given by one of the bailies of the burgh, as the king's bailie; and none can be Notary thereto but the common clerk of the burgh; otherwise the same are declared null; and the clerk likewise extends them. But in cases of necessity, where there was neither bailie nor town-clerk, and where one was obliged to do diligence, seisin within burgh hath been sustained when taken by the sheriff-clerk as was decided in the case of *Thomson contra Mackitrich*, 21st July 1666, observed by Stair.

From this act, it is to be observed, that the magistrates of burghs-royal are not superiors of burgage-lands; but, being the king's bailies and sheriffs within the burgh, are commissioned and empowered by their erection, to seize their burgesses in the lands and tenements lying within their territories: for in effect the community of the burgesses are the king's vassals, and not the individuality of every burgess.

It is farther to be observed, that burgage-lands never fall in non entry; for the apparent heir being once infeft, his seisin draws back to the day of his predecessor's death; and the reason is obvious; for non-entry, being a casualty due to the superior upon the death of his vassal, cannot fall out in communities or burghs, because they never die.

By the 16th act, *parl.* 22, James VI, anent registration of seisins, these in burgage-lands were excepted, (as has been told in the preceding title); and so far were these seisins exeemed from such solemnities, that the Lords sustained a seisin within burgh, subscribed by the town-clerk, though there was no vestige of it in the town's register nor the clerk's protocol, and had been latent for many years; 30th June 1668, Burnet *contra* Swane, observed by Stair. For although town-clerks use to registrate seisins, yet there being no necessity upon them to registrate, and the seisins not being annulled for want of registration, singular-successors in burgage-lands were not sufficiently secured, till by act 11, *parl.* 3, Ch. II, it was statute, That all instruments of seisin of tenements within burghs-royal, or freedoms thereof, holding burgage, and generally all other writs which are enjoined by act 16, *parl.* 22, Ja. VI, shall be inserted and registrate in the town-clerk's books of the several burghs *respective*, within sixty days after the date of the same; and if they be not inserted, the same are declared null, with respect to third parties acquiring a perfect and lawful right to the said tenements, but prejudice always to them to use the said writs against the parties makers thereof, their heirs and successors.

By this act, the town-clerks are to keep a separate book therefor, depending only upon the magistrates of the burgh, without necessity of any warrant from the clerk-register; and likewise they are to keep minute-books of the same, which are to be quarterly signed and compared by the provost and bailies of the several burghs. The form of which comparing take as follows.—“Edinburgh, the                      day of                      years. The principal register of seisins within the burgh of Edinburgh, being compared with the minute-book thereof, conform to act of parliament made in anno 1681, are found to agree exactly



together; as is testified by us the magistrates of the said burgh subscribing." *Vide Tit. viii, of Reversions.*

The clerk's doquet to the seisin will be the same as in the long doquet at the end of *Tit. iv, part i*, only, after his name, and the words *Notarius-publicus*, must be insert, *et clericus communitatis burgi de*

The seisin is likewise registrate, and marked upon the back by the same clerk, thus.—“Edinburgh, the            day of            years. Registrat in the            and            leaves of the first [or second] protocol of *G H*, conjunct clerk of Edinburgh, conform to the act of parliament 1681, anent registration of seisins and others within burgh, by me.”

However, seisins taken out of the town's books, not by the town-clerk who gave the seisin, but by his successor, will not serve for a principal seisin, without a warrant or adminicle, the town-book being but the protocol of the town-clerk; and, therefore, either the town-book must be produced, that the seisin may be transumed, or commision granted for inspection or collation; which being returned, was found to suffice as a transumpt; 11th February 1681, *Irvine contra Corsan*, observed by Stair.

These seisins differ conform to the several kinds thereof: some are given to apparent heirs cognosced by hasp and staple; others are given to purchasers upon disposition, or upon contracts of marriage, wadset, or heritable bonds or adjudications.

Infestments by hasp and staple are given in this manner.—“The bailie of the burgh, with his clerk, and the necessary witnesses, being met at the tenement, whereof seisin is to be given, the apparent heir represents to them that his father, or other predecessor, died last vest and seised in that tenement; and, for verifying it, he exhibits to the bailie and his clerk, before the witnesses, his predecessor's infestment; adding withal, that it was notorious, that he is apparent heir, and nearest of kin to this predecessor, his father, grandfather, or

the like ; and, therefore, he requires the bailie to give to him state and seisin of that tenement by hasp and staple, conform to the use and custom of burgh. Whereupon the bailie, albeit he know the truth of what is so said, inquires at the witnesses, or other persons in their company, if he who demands seisin was the apparent heir to the person last infeft, or habit and repute such ; and upon their answering affirmatively, he causes the apparent heir take hold of the hasp and staple of the door, and enter the house, and bolt the door upon himself ; who coming out, takes instruments in the hands of the clerk of the burgh, for certifying what was done : which instrument is duly registrate in the town-court books."

A burgh of barony, or of regality, to which the privilege of the king's free burgh-royal is granted, though neither the lands nor the town be holden of the king in free burgage, but of the prince, is nevertheless allowed to give seisins by hasp and staple ; 13th November 1623, Marshal *contra* Marshal, observed by Durie.

*Seisin to an Heir cognosced by Hasp and Staple.*

" IN DIE nomine, &c. personaliter accessit honorabilis vir *A*, unus balivorum burgi de , ad illud tenementum terræ, antè et retro, subtus et supra, cum pertinentibus ; olim pertinens ad *B* de , deinde ad *C* de , et deinde ad demortuum *D*, scribam in Edinburgo ; jacens in dicto burgo de , ex australi latere vici regii in clausura vocata , et occidentali parte ejusdem, inter terram quondam *E*, deinde quondam *F*, et nunc *G*, ex boreali, terras quondam *H*, deinde *J*, et nunc *K*, ex australi, et transitum clausuræ vulgo vocatæ , ex occidentali, et transitum dictæ clausuræ vocatæ , ex orientali partibus : et ibidem dictus balivus, virtute et vigore sui officii, cognovit et intravit

providum et honestum virum *L*, scribam in Edinburgo, tanquam filium legitimum et propinquiorem hæredem \* dicti quondam *D*, sui patris, in et ad totum et integrum dictum tenementum terræ, ante et retro, subtus et supra, jacens in dicto burgo de , et bondatum ut dictum est, per terræ et lapidis dicti tenementi deliberationem, et fixularum et tenelarum traditionem; ipsumque *L*, tanquam filium legitimum et hæredem † dicti quondam *D*, sui patris, in toto et integro dicto tenemento terræ, ante et retro, subtus et supra, jacente in dicto burgo, et bondato ut dictum est, investiendo hereditarie sasivit, ut infra burgum heredibus burgensibus in talibus fieri consuevit, salvo jure cujuslibet. ‡ Super quibus omnibus

\* If the propinquity appear by a general service, say,—"deservitum et retornatum ad dictum quondam," &c.

† And if it be by a service, add,—“deservitum et retornatum,” &c.

‡ In a case where the apparent heir disposes his predecessor's burgage-lands before he is infest himself, the cognition of his propinquity in blood to the deceased, and the purchaser's infestment, may be inserted in one and the same seisin, thus,—“Et sine mora, *W*, scriba in Edinburgo, procurator rite et legitime constitutus, ac in nomine dicti *L*, hereditarii proprietarii tenementi terræ supra et subtus scripti, ut mihi Notario publico subscribenti, per ipsius procurationis literas, contentas in quibusdam venditionis et alienationis literis, per præfatum *L*, Titio, heredibus suis et assignatis quibuscunque, factis et concessis, de data , lucide constabat, totum et integrum tenementum terræ, ante et retro, subtus et supra, jacens,” &c. [Here the tenements as bounded are again to be repeated, and then say,]—“in manibus dicti balivi sursum reddidit, pureque et simpliciter resignavit, in favorem proque nova infeodatione ejusdem præfato Titio, modo subscripto, danda et concedenda. Qua resignatione sic rite et legitime facta et admissa, dictus balivus, virtute et vigore sui officii, et de speciali rogatu dicti procuratoris resignantis, statum, sasinam, possessionem corporalem, actualem, et realem, pariter et sasinam hereditariam, totius et integri dicti tenementi

et singulis præmissis præfatus *L*, a me Notario publico subscribente, sibi fieri petiit hoc præsens publicum instrumentum, seu plura publica instrumenta. Acciderant hæc super fundum dicti tenementi terræ, hoc inter et ante meridiem, sub anno die, mense, regnoque regis præscriptis, præsentibus ibidem providis et honestis viris *W* et *R*, *J* et *S*, cum diversis aliis, testibus ad præmissa vocatis et requisiti." [*Then follows the Notary's doquet.*]

If seisin be given to a purchaser and his wife on disposition, for her life-rent-use alienably, the seisin will be the same as above, until you come to the delivery of seisin by the bailie, which begins with the words.—“ Et ibidem dictus balivus, virtute et vigore,” &c. in place of which say,—“ et ibidem *L* scribâ in Edinburgo, procurator rite et legitime constitutus; ac in nomine dicti *L*, hereditarii proprietarii dicti tenementi terræ, ut mihi Notario publico subscribenti, per ipsius procuratoris literas, contentas in quibusdam venditionis et alienationis literis, per ipsum, Titio et Semproniam ejus sponsam, et eorum alteri diutius viventi, in conjuncta infeodatione, per dictam Semproniam vitali redditu solummodo, et *M*orio, eorum filio, quo deficiente, dicti Titii, heredibus legitimis et assignatis quibuscunque, confectis, super fundum dicti tenementi terræ productis et perfectis, de data , lucide constabat, totum et integrum dictum tenementum terræ, ante et retro, super et supra, cum pertinentibus, olim pertinens,” &

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terræ, pertinentis ad dictum *B*,” &c. [as above], “ per terræ et lapidis fundi dicti tenementi terræ deliberatione præfato Titio, personaliter præsentem et acceptantem, contulit exhibuit, et, secundum tenorem dictarum venditionis alienationis literarum, dedit pariter et deliberavit, salvo jure cujuslibet,” &c. The rest as above.

\* If seisin be given on a wadset, say,—“ in quodam contractu hypothecationis et impignorationis, inito et perfecto inter illum et Titium, prout in dicto contractu, super fundum dicti tenementi terræ productum et perfectum,” &c.

Here take in the bounding as in the disposition, and then say,]—“et bondatum ut prædicitur per fustim et baculum, in manibus dicti balivi sursum reddidit, iureque et simpliciter resignavit, in favorem, proque nova infeodatione ejusdem præfati Titio, modo superscripto, danda et concedenda.\* Qua resignatione sic rite et legitime facta et admissa, dictus balivus, virtute et vigore sui officii, et de speciali mandato dicti procuratoris resignantis, statum, possessionem corporalem, actualem, realem, pariter et sasinam hereditariam, totius et integri dicti tenementi terræ, ante et retro, subtus et supra, cum pertinentibus, olim pertinentis,” &c. [Here the lands are again repeated, then follows,]—“jacentis in dicto burgo, et bondati ut prædicitur, per terræ et lapidis fundi dicti tenementi terræ deliberationem, memoratis Titio et Sempronix, ejus sponsæ, eorumque alteri diutius viventi, pro vitali reditu dictæ Sempronix solummodo, ibidem personaliter præsentibus et acceptantibus, secundum tenorem dictarum venditionis et alienationis literarum in omnibus, *dedit, tradidit, contulit*, pariter et *deliberavit*, salvo jure cujuslibet. Super quibus omnibus et singulis præmissis, præfati Titius et Sempronia a me Notario publico sibi fieri petierunt hoc præsens publicum instrumentum,” &c. as in other seisins.

If seisin be given of an annualrent out of burgage-lands, after having narrated the compearance of the

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\* If seisin be given on a wadset, add.—“*redimabili omni modo et sub reversione dicto tenemento terræ, a præfato Titio, ejusque prædictis, per dictum L., ejusque heredes, successores, et assignatos, per solutionem iis, aut in eorum usus consignationem,*” &c. [Here take in the precise words of the clause of reversion, and where the same is to be consigned, with the place of redemption, and upon what premonition; and then, immediately after the clause of seisin, and before that which begins *super quibus*, &c. add,]—“*redimabili omni modo dicto tenemento terræ, et sub reversione modo superscripto.*”

Notary, witnesses, bailie, and party or procurator, at the word *contentas*, in the beginning of the foregoing seisin, add,—“ in quadam hereditaria obligatione per ipsum confecta, Titio, ejusque heredibus et assignatis quibuscunque, ac super fundum dicti tenementi terræ producta et perlecta, de data . . . , lucide constabat, totum et integrum unum annum redditum ducentarum mercarum monetæ Scotiæ, vel talem annum redditum, qui pro tempore, per quamlibet supervenientem legem, correspondebit principali summæ quatuor mille mercarum, annuatim levandum et percipiendum, ad duos anni terminos, Festa scilicet Pentecostes, et Sancti Martini, in hieme, per æquales portiones, de toto et integro dicti *L* tenemento, ante et retro, subtus et supra, cum pertinentibus, pertinente olim,” [Here take in the boundings of the tenements, as in the heritable bond, and then add,] “ vel de quavis parte vel portione ejusdem, promptioribus censibus, firmis, proficuis, et devoriis ejusdem, per fustim et baculum, in manibus dicti balivi sursum reddidit, pureque et simpliciter resignavit, in favorem, proque nova infeodatione et sasina danda et concedenda præfato Titio, ejusque heredibus et assignatis quibuscunque, hereditarie; redimabili et sub reversione dicto annuo redditu, per dictum *L*, ejusque heredes et assignatos, a præfato Titio et ejus prædictis, per solutionem iis dictæ principalis summæ quater mille mercarum, omniumque annuorum reddituum pro tempore debitorum, infra prætorium dicti burgi, die Festum Pentecostes, vel Sancti Martini, in hieme, præcedente, si sit legalis, qua deficiente, proxima die legitima sequente, inter ortum et occasum solis, super præmonitione quadraginta dierum debite facienda, per prædictum *L*, ejusque prædictos, præfato Titio, ejusque prædictis, personaliter vel apud ipsorum pro tempore habitationis domum, in presentia Notarii testiumque, prout congruit; vel per consignationem dictarum summarum, si dictus Titius ejusve prædicti abfuerint, vel hasce præsentis accipere recusarint, in

manibus præpositi, vel quibusvis balivorum dicti burgi, quæ Titio ejusque prædictis periculo consignantis pro futuræ sunt, secundum dictam hereditariam obligationem, et procuratoriam resignationis inibi contentam, in omnibus punctis. Qua resignatione sic rite ac legitime facta et admissa, dictus balivus, virtute et vigore sui officii, et de speciali mandato dicti procuratoris resignantis, statum, possessionem corporalem, actualem, et realem, totius et integri dicti annui redditus, vel talis annui redditus, qui pro tempore, per leges hujus regni, dictæ principali summæ correspondebit, annuatim levandi et percipiendi, ad dictos duos anni terminos, per æquales portiones, de toto et integro dicto tenemento terræ, ante et retro, subtus et supra, jacente in dicto burgo de , et bondato ut prædicitur, per terræ et lapidis fundi dicti tenementi, et unius denarii, ut moris est, deliberationem, honesto viro *M* de , tanquam actornato, et in nomine prædicti Titii, contulit, exhibuit, et, secundum tenorem dictæ hereditariæ obligationis, dedit pariter et deliberavit: redimabili omni modo dicto annuo redditu, et sub reversione modo prædicto. Super quibus omnibus," &c. As in other seisins.

If a father shall resign his burgage-lands to his son, and the son at the same time shall resign the said lands in favour of his wife, for her liferent-use, the seisin will be the same as in the first, by hasp and staple, until you come to the bailie's delivery of seisin; and then say,—“ nec non accessit idem balivus ad illud tenementum terræ, ante et retro, subtus et supra, olim,” &c. [Here take in the tenements as designed and bounded, and then say,]—“ et ibidem *A*, scribe in Edinburgo, procurator rite et legitime constitutus in nomine dicti *B*, ut mihi Notario publico subscribenti, per ipsius procurationis literas, contentas in contractu matrimoniali, inito et confecto inter illum et *C*, ejus filium, ex parte una, et *D*, filiam legitimam *E*, unius balivorum burgi de , cum consensu dicti *E*, sui patris, ex parte altera, prout in

dicto contractu matrimoniali, super fundum dictorum tenementorum terrarumque producto et perlecto, de data , lucide constabat, totum et integrum," &c. [Here repeat your lands, as above, and then add,]—" jacens in dicto burgo de , et bondatum modo suprascripto ; per fustis et baculi deliberationem, in manibus dicti balivi sursum reddidit, pureque et simpliciter resignavit: reservans dicti *B*, et *H*, ejus sponsæ, vitales redditus dimidii tenementorum terrarum aliorumque suprascriptorum, durantibus omnibus eorum vitæ diebus. Quibus resignationibus sic rite et legitimi per se et separatim factis et admissis, dictus balivus, virtute et vigore," &c. [as above ; and after the words, " pariter et sasinam," add,]—" hereditariam, totius et integri dicti tenementi terræ, olim," &c. [Here the several tenements must be repeated, and then say,]—" jacentis in dicto burgo, et bondati ut prædicitur, per terræ et lapidis fundi dictorum tenementorum terrarumque respective et successive traditionem, præfato *C*, personaliter præsentem et acceptanti, contulit, exhibuit, et deliberavit: reservans dicto *B*, ejusque sponsæ, eorumque diutius viventi, vitales redditus dimidii tenementorum terrarumque, durantibus omnibus eorum vitæ diebus. Et sine mora præfatus *A*, procurator rite et legitime constitutus in nomine dicti *C*, ut mihi Notario publico subscribenti, per ipsius procurationis literas etiam in dicto contractu matrimoniali, de data antedicta, contentas, lucide constabat, totam et integram justam et æqualem dimidietatem dictorum tenementorum, terrarum aliorumque superscriptorum, cum pertinentiibus, jacentium et bondatorum ut prædicitur, per fustis et baculi deliberationem, in manibus dicti balivi sursum reddidit, pureque et simpliciter resignavit. Quibus resignationibus," &c. [as above ; and then after the words, " pariter et sasinam," add,]—" vitalis redditus totius et integræ justæ et æqualis dimidietatis tenementorum terrarum aliorumque suprascriptorum respective et successive traditionem *A*, tanquam ac-



tornato, et in nomine dictæ *D*, sponsæ dicti *C*, durantibus omnibus suæ vitæ diebus, contulit, exhibuit, et, secundum tenorem dicti contractus matrimonialis. dedit pariter et deliberavit : salvo jure cujuslibet, Super quibus omnibus et singulis præmissis, præfatus *C*, pro seipso, nec non dictus *A*, tanquam actornatus, et in nomine dictæ *D*, a me Notario publico ipsis fieri petierunt hoc præsens publicum instrumentum, seu plura publica instrumenta. Acta erant," &c. [*ut supra, in communi forma.*]

When the magistrates of a burgh-royal are charged with letters of horning to infest an adjudger, they seldom or never disobey the charge, but give seisin forthwith ; which will be the same as in the first, to these words,—“ et ibidem dictus balivus, virtute et vigore sui officii,” and then add,—“ et in obedientiam quarundem literarum S. D. N. Regis, impetratarum super quoddam decretum adjudicationis, coram Dominos Concilii et Sessionis,        die        mensis ultimo elapsi, obtentum, ad instantiam *N* de        , contra *O* de        , pro solutione et satisfactione ei summarum monetæ principalium, annuorum reddituum, et liquidatarum expensarum inibi contentarum, extendentium in integrum, ad datam dicti decreti adjudicationis, ad summam ducentarum mercarum monetæ Scotiæ, salvo justo calculo, contra præpositum et balivos dicti burgi de        , ipsis præcipientium et mandantium, ut prænominatum *N*, ejusque heredes et assignatos, in toto et integro,” [Here take in the lands as designed and bounded in the decret of adjudication, and then say],—“ hereditarie infeodarent, sub pœna rebellionis et cornu positionis ; prout in dictis literis S. D. N. Regis, executionibusque et indorsationibus earundem, de data sub signeto regio        die mensis        et anno        , latius continetur, statum, possessionem corporalem, actualem, realem, pariter et sasinam hereditariam, totius et integri dicti tenementi terræ, olim,” &c. [Here take in the tenements as designed and bounded, and then

add,]—"jacentis in dicto burgo de , et bondati ut prædicitur; per terræ et lapidis fundi dicti tenementi terræ deliberationem, præfato *N*, personaliter præsentanti et acceptanti, contulit, exhibuit, et, secundum tenorem dictarum literarum *S. D. N. Regis*, dedit, tradidit, pariterque deliberavit: salvo jure cujuslibet.\* Super quibus," &c.

*Instrument of Cognition and Seisin.*

"IN the name of GOD, Amen. Be it known to all men by this present public instrument, that upon the                    day of                    -years, and of the reign of our Sovereign Lord George III, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, the                    year: In presence of me Notary-public, and common clerk of the burgh of *A*, and witnesses after named, subscribing, compeared personally, upon the ground of the subjects after mentioned, *H*, as procurator and attorney for *C*, eldest lawful son of the deceased *D*, whose power of attorney was sufficiently known to me the said Notary-public; and also compeared an honourable man, *B*, one of the present bailies of the said burgh of *A*, the said *H* having and holding in his hands an instrument of seisin of the lands, tenements, and others after mentioned, in favour of the said *D*, of date the                    day of                    which instrument of seisin the said *H*, procurator foresaid, exhibited to the said *B*, bailie foresaid, humbly requiring him to cognosce the said *C*, eldest lawful son of the said *D*, his father, conform to the use and custom of burgh observed in the like cases; and thereafter to enter and infeft him in the said lands, tenements, and others, as heir foresaid: *which request* the said *B*, bailie fore-

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\* Here may be added,—"*redimabili omni modo dicto tenementi terræ a præfato *N*, ejusque prædictis, per dictum *O*, ejusque prædictos, secundum actum parliamenti.*"

said, finding to be just and reasonable, he received the foresaid instrument of seisin into his hands, and delivered the same to me Notary-public, to be read and published to the witnesses, and others present. Which I having done, the said *B*, after taking proof of the said *C*'s propinquity by the witnesses subscribing, did, by virtue of his office of bailliary in said burgh, cognosce, enter, and infest *C*, eldest lawful son and heir of the deceased *D*, in all and whole [*Here the subjects to be fully taken in*]; and that by delivery of earth and stone of the ground of the said lands, and hasps and staples of the said tenements, with earth and stone of the ground thereof, to the said *H*, procurator and attorney for and in name of the said *C*, after the manner and custom of entering and infesting the heirs of the proprietors of tenements within burgh, to the inheritance of their ancestors, in all points, *salvo jure cujuslibet*. (A) Whereupon, and upon all and sundry the premises, the said *H*, as procurator and attorney foresaid, asked and took instruments in the hands of me the said Notary-public subscribing. These things were so done upon the ground of the said subjects, between the hours of        and        of the day, month, year of God, and king's reign, respectively first above written, before, and in presence of        and        witnesses to the premises specially called and required, and hereto with me subscribing."

#### *Observations.*

When the heir makes over the subject to a third party before he is infest, the cognition of his propinquity in blood to the deceased, and the purchaser's infestment, may be inserted in the same instrument. In such case, at letter (A) *add*,—"Thereafter the said *C*, pursuant to a disposition granted by him to *K*, of date the        resigned and surrendered the afore-mentioned tenement, with its pertinents, in the

hands of the said *B*, as in the hands of our Sovereign Lord the King, the immediate superior thereof, in favour, and for new infeftment of the same, to be made, given, and granted to the said *K*, his heirs or assignees whomsoever, heritably and irredeemably, in due and competent form: *which* resignation so made, the said *B* *accepted* by receiving the symbols into his hands, and forthwith gave and delivered to the said *K*, heritable state and seisin, with real, actual, and corporal possession, of all and whole the tenement of land above described, with the pertinents; and that by delivery to the said *H*, as procurator and attorney foresaid, of earth and stone of the ground of the same; and other symbols necessary," &c. *Whereupon, &c. (as in the preceding example.*

If the ancestors right was personal, the style will run as follows.—“Having and holding in his hands a disposition of the lands, tenements of houses, and others after mentioned, dated  
made and granted by *L* to the said *D*; which disposition the said *H*, procurator foresaid, exhibited to the said *B*, bailie foresaid, humbly requiring him to cognosce the said *C*, eldest lawful son of the said *D*, his father, conform to the use and custom of the burgh in like cases: which request the said *B*, bailie foresaid, finding to be just and reasonable, he received the foresaid disposition into his hands, and delivered the same to me Notary-public subscribing, to be read and published to the witnesses and others bystanding; *which* I having done, the said bailie, after taking proof of the said *C*'s propinquity by the witnesses subscribing, did, by virtue of his office of bailliary, in the said burgh, cognosce the said *C*, eldest lawful son of the said deceased *D*, his father. *And* thereafter the said *H*, as procurator specially constitute, by virtue of the procuratory of resignation contained in the foresaid disposition, with all due reverence, and by staff and batton, as use is, resigned and

surrendered all and whole [*Here take in the subjects*] in the hands of the said bailie, in favour, and for new infeftment of the same, to be given and granted to the said C. Which resignation duly and lawfully made, was admitted of, and received by the said bailie, who, by virtue of his office, and at desire of the said procurator, gave and delivered heritable state and seisin, actual, real, and corporal possession of all and whole [*Here describe the subjects*] to the said C; and that by delivery of earth and stone," &c. (*as in the above seisin*). This instrument is known by the name of *Resignation, Cognition, and Service*.

*Instrument of Seisin of a Burgage-Tenement.*

IN the name of GOD, &c. (*as on page 82*). In presence of me Notary-public, common clerk of the burgh of A, and witnesses subscribing, compeared personally (1.) D, as procurator and attorney for and in name of M, specially constituted, by virtue of a procuratory of resignation contained in the disposition after mentioned; whose power of attorney was sufficiently known to me Notary-public; and passed with an honourable man B, one of the present bailies of the burgh of A, to the ground of the lands, tenement of houses, and others after mentioned; and then and there, the said D, as procurator foresaid, with all due reverence, and by staff and batton, as use is, resigned and surrendered all and whole (2.) [*Here insert the subjects to be taken from the disposition*] in the hands of the said bailie, in favour and for new infeftment of the same, to be given and granted to the said N, in due and competent form; and that by virtue of, and conform to a procuratory of resignation contained in a disposition made and granted by (3.) the said M to the said N, of date            day of            as from the said disposition produced to, and publicly read by me the said Notary-public to the bailie, and others present, did clearly

appear. Which resignation so duly and lawfully made, was admitted of, and received by the said bailie, who, by virtue of his office, and at desire of the said procurator, gave, granted back, and delivered to the said *N*, heritable state and seisin, actual, real, and corporal possession, of all and whole [*Here describe the subjects*] and that by delivery to the said *D*, as procurator and attorney foresaid, of earth and stone of the ground of the said lands, hasp and staple of the said tenements of houses, with earth and stone of the ground thereof, after the form and tenor of the foresaid disposition, and custom of burgh, in all points. Whereupon," &c. (*as in the preceding example*).

### Observations.

IF the resignation proceeds on an heritable bond, a few variations will be necessary, in so far as the bond must be mentioned in place of the disposition; and seisin will be given of an annualrent furth of the lands, as well as the lands themselves, redeemable always as therein expressed.

(1.) If the resignation is made *propriis manibus*, the style is,—“compeared personally *M*, the granter of the disposition, in favour of \_\_\_\_\_ after mentioned;” and where resignation is said to be made by the procuratory of resignation, say,—“the said *M*, in pursuance of the foresaid disposition, resigned,” &c. And after the words, *witnesses to the premises specially called and required*, add,—“before whom the said *N*, in support of the facts herein asserted, hath subscribed this instrument on the day and date hereof.”

(2.) If an heritable bond, add,—“all and whole an annualrent of \_\_\_\_\_ exactly in terms of the procuratory of resignation.

(3.) If the person to be infeft connects both by retour and assignation, then, at this clause, say,—“made and granted by the said *M* to *L*,



from the said *D*, all and whole [*Here take in the subjects*] and decerned and declared the same to pertain and belong to the said *C*, his heirs or assignees, heritably, for payment and satisfaction to them of the principal accumulated sum of \_\_\_\_\_, *salvo justo calculo*; and of the annualrent of the said accumulated sum, during the not redemption thereof, over and above the composition to superiors, and expenses of this instrument of seisin: *And ordained* the said *C*, and his foresaids, to be infeft and seised in the foresaid lodging, tenement, and others so adjudged, to be holden by them of the immediate lawful superiors of the same, as the said decret of adjudication, the abbreviate whereof is duly recorded the \_\_\_\_\_ in itself more fully bears. Which decret of adjudication particularly before narrated, the said *B*, as procurator and attorney foresaid, exhibited and presented to the said *A*, bailie, desiring and requiring him, in obedience thereto, and by virtue of his office, to give infeftment of the foresaid subjects to the said *C*; which desire the said bailie finding to be just and reasonable, he received the said decret, and abbreviate thereof, into his hands, and delivered the same to me Notary-public, to be publicly read to him and the witnesses upon the ground of the foresaid subjects, which I accordingly did; and immediately thereafter the said *A*, bailie, (*a*) gave and delivered to the said *C*, heritable state and seisin, actual, real, and corporal possession of all and whole the dwelling-house, and others, with the pertinents particularly above described, together with the ground-right and property thereof, in payment and satisfaction to him and his foresaids, of the principal accumulated sum above mentioned, and of the annualrent thereof, during the not redemption, over and above the composition to superiors, and expenses of the instrument of seisin; and that by delivery of earth and stone of the ground of the foresaid subjects to the said *B*, as procurator and attorney fore-



said, for and in name of C, after the form and tenor of the said decreet of adjudication, and abbreviate thereof, (b) in all points; but redeemable always, and under reversion, conform to act of parliament." *Whereupon, &c. (in common form).*

### *Observations.*

IF the seisin proceeds upon a charge to enter, the style runs thus, at letter (a).—"In obedience to a charge given to the magistrates of the said burgh, proceeding upon letters of horning raised upon the decreet of adjudication before recited." And at letter (b) add,— "letters of horning and charge following hereupon."

## TITLE IV.

### OF THE WARRANTS OF SEISINS.

HAVING already said that I should treat more fully of the warrant upon which seisin proceeds, I shall here present the reader with some of the most ordinary models for narrating such warrants of seisin as are written either in Latin or English. And as this clause admits of a greater variety than any other in the whole instrument; because every particular warrant upon which seisin proceeds, hath something or other peculiar to itself in the narrating of it, it is proper to observe, that the following narratives are not set down so as the same may be constantly followed; but it is left to the prudent Notary to adapt the narrative to the nature of the infestment he is to take, making use of these only by way of example in the like cases.

*Narrative of a Precept on a Retour.*

“ ——— Habens, et in suis manibus tenens, quoddam præceptum sasinæ pergamenta scriptum, et cancellario dicti S. D. N. regis directum, pro sasina et possessione danda prænominato *A*, nunc de , tanquam legitimo et propinquiore heredi masculo quondam *D* de sui patris, totarum et integrarum terrarum, decimarum, aliorumque subscriptorum, cum pertinentibus.”

*Narrative of a Precept of Clare Constat.*

“ ——— Habens, &c. dictum præceptum sasinæ, (vulgo præceptum de clare constat vocatum), factum et concessum per honorabilem virum *A* de , in favorem dicti *B* de , tanquam heredis dicti quondam *D* de sui patris, de totis et integris terris, annuo redditu aliisque subscriptis, de data, tenore, et contentis subscriptis.”

If the precept be in English, as they sometimes are, the narrative will be thus.—

“ ——— Having, &c. the said precept of seisin, commonly called a precept of *clare constat*, made and granted by an honourable gentlemen *A* of , in favour of the said *B* of , as heir to the said umquhile *D* of , his father, of all and haill the lands, annualrent, and others under written, of the date, tenor, and contents after mentioned.”

*Narrative of the Charter.*

“ ——— Habens, &c. quandam chartam resignationis sub magno sigillo, continentem in fine ejusdem præceptum sasinæ subtus mentionatum, factum,

datum, et concessum, per S. D. N. Regem, prædicto *A* de , et heredibus suis masculis de ejus corpore.” [*Here insert the tailzie and substitution as in the charter*], “de data subtus meationata. Per quamquidem chartam (pro causis inibi specificatis) dictus S. D. N. cum avisamento et consensu Domini Capitalis Baronis et reliquorum Dominorum Baronum Scaccarii S. D. N. Regis, in hac parte regni magnæ Britanniae Scotia vocata,” [*and if there be any provisions, say,—*“et cum et sub provisionibus, conditionibus, reversionibus, et limitationibus inibi et postea specificatis], dedit, concessit, et disposuit, ac pro perpetuo confirmavit, præfato *A*, heredibusque suis masculis de ejus corpore, quibus deficientibus, heredibus suis et assignatis quibuscunque, hereditarie et irredimabiliter, absque quavis reversione, redemptione, aut regressu, in perpetuum, totas et integras, [*Here insert the lands verbatim, and then say,*—“una cum omni jure,” &c. [*and then, if there be any provisions, say,*—“et hoc cum et sub reversionibus, reservationibus, restrictionibus, provisionibus, conditionibus, oneribus, qualificationibus, et limitationibus omni modo subscriptis,” viz. [*Here insert the provisions as in the charter, and thereafter the Quæquidem; then say,*—“et dictus S. D. N. Rex, (pro causis inibi specificatis), cum avisamento et consensu prædicto, de novo dedit, concessit, et disposuit, præfato *A*, et heredibus suis masculis de ejus corpore, quibus deficientibus, heredibus suis et assignatis quibuscunque, totas et integras terras, decimas, molendinas, salmonum piscinas, baronias, castra, turres, fortalicia, aliaque particulariter suprascripta: Tenendas de dicto S. D. N. Rege, modo in dicta charta amplius mentionato et contento; prout eadem, continens clausulam disjunctionis terrarum, decimarum, salmonum piscinarum, molendinarum, aliorumque suprascriptorum, ab omnibus aliis dominiis, baroniis, aliisque, quibus ante annexa fuerunt, et unionis, erectionis, creationis, et incorporationis earundem, in

unam integram et liberam baroniam, vocandam omni futuro tempore baroniam de ; et ordinans dictum manerii locum de principale fore messuagium ejusdem, et unicam sasinam ibidem, vel super quamlibet partem dictarum terrarum, capiendam, per traditionem terræ et lapidis fundi earum solummodo, absque necessitate utendi quibuslibet aliis symbolis, validam et sufficientem fore sasinam, pro integris terris, decimis, salmonum piscinis, aliisque suprascriptis; et hoc non obstante quod eadem minime contigua sint, sed in diversis locis jaceant; ut eadem, inquam, latius proportat."

*Narrative of a Charter of Adjudication.*

" — Habens, &c. quandam chartam adjudicationis sub magno sigillo, continentem in fine ejusdem præceptum sasinae subscriptum, factum, datum, et concessum, per dictum S. D. N. Regem, præfato A, heredibus suis et assignatis quibuscunque. Per quamquidem chartam (pro causis inibi specificatis) dictus S. D. N. Rex, cum avisamento et consensu," &c. [*as in the narrative of a charter*], "et cum et sub provisione et reversione inibi mentionatis, dedit, concessit, et disposuit, præfato A, heredibus suis et assignatis prædictis, hereditarie, totas et integras," &c. [*Here insert the lands, then say*],—"redimabiles omni modo et sub reversione, et sub et cum provisione et conditione in dicta charta contentis," [*and thereafter insert the Quæquidem; then say*],—"prout dicta charta, de data subtus mentionata, continens dictum sasinae præceptum, una cum dispensatione pro unica capienda sasina apud dictum manerii locum de , vel super quamlibet partem terrarum aliorumque suprascriptorum, et declarans eandem validam, sufficientem, et efficacem fore, pro integris terris, decimis, aliisque suprascriptis," &c.

*Or thus, if granted by a Subject Superior.*

“ — Having, &c. an charter of adjudication granted by a Noble Lord , in favour of *A*, his heirs and assignees whatsoever ; containing, in the end thereof, the precept of seisin underwritten : whereby (for the causes therein specified) the said Noble Lord, with and under the provision and reservation therein mentioned, gave, granted, and disposed to the said *A*, his heirs and assignees foresaid, heritably, all and hail [ *Here take in the lands ; then say* ],—redeemable always, and under reversion, and with and under the condition and provision contained in the said charter, [ *Thereafter insert the Quæquidem ; then say* ],—as the said charter, of the date after mentioned, containing the foresaid precept of seisin, at more length purports.”

*Narrative of a Charter from a Subject.*

“ — Habens, &c. quandam chartam, de data subtus mentionata, factam, datam, et concessam, per dictum *A* de , in favorem præfati *B*, heredumque suorum et assignatorum inibi mentionatorum, hereditarie et irredimabiliter. Per quamquidem chartam, dictus *A* (pro causis inibi specificatis) dedit, concessit, et disposuit, prædicto *B*, heredibus suis et assignatis inibi contentis, hereditarie et irredimabiliter, ut dictum est, totas et integras,” [ *Here insert the lands, with the Quæquidem, and provisions, if any be ; then say* ],—“ prout dicta charta, inibi continens sasinae præceptum subtus mentionatum, latius pro-  
portat.”

*In English thus.*

“ — Having, &c. an charter of the date after mentioned, made and granted by the said *A* of

to and in favour of the said *B*, his heirs and assignees therein mentioned, heritably and irredeemably; whereby (for the causes therein specified) the said *A* gave, granted, and disposed, to the said *B*, his heirs and assignees therein mentioned, heritably and irredeemably, as said is, all and haill [*Here insert the lands, with the Quæquidem, and provisions, if any be; then say*],—as the said charter, of the date under written, containing the precept of seisin therein and after mentioned, at more length purports.”

A charter upon a contract of wadset will differ nothing from the above, except, in place of the words, *heritably and irredeemably*, you must insert,—“*heritably, and under reversion, in manner therein mentioned;*” and in the conclusion of the narrative, to add these words,—“*as the said charter, of the date under written, whereby the lands and others above written, are declared to be redeemable, in manner therein mentioned,*” &c.

### *Narrative of a Disposition of Lands.*

“— Having, &c. an disposition, of the date , and containing the precept of seisin after mentioned, made and granted by the said *A* of , to and in favour of the said *B*: whereby (for the causes therein specified) the said *A* sold, annailzied, and disposed, from him, his heirs, and all other his assignees, to and in favour of the said *B*, his heirs and assignees whatsomever, heritably and irredecably, but any manner of reversion, redemption, or regress whatsomever, all and haill [*Here insert the lands, then say*], lying within the parochin of and sheriffdom of , together with all right, title, interest, claim of right, property, and possession, petitory and possessory, which the said *A*, or his predecessors and authors, heirs and successors, had, have, or anywise may claim or pretend to the lands and others above written, or to any part or portion thereof, or to the

maills, farms, profits, and duties thereof, in all time coming. [*And if there be any provisions, add these words*].—With and under the provisions, &c, after mentioned, viz. [*Here insert the provisions, then say*],—as the said disposition, of the date above written, containing obligation to infeft by double infeftments, and two several manners of holding, *a me* and *de n.e.*, with procuratory of resignation, clause of absolute warrandice, assignation to the maills and duties, writs and evidents, with the precept of seisin after inserted, and several other usual clauses, at more length purports.”

*Narrative of a Disposition of annualrent.*

“—— Having, &c an disposition, of the date , and containing the precept of seisin after specified, made and granted by the said *A* of , to and in favour of the said *B*, whereby (for the causes therein specified) the said *A* sold, alienated, and disposed from him, his heirs, and all others his assignees whatsoever, all and haill an annualrent of , or such an annualrent as shall be due for, and agreeable to the principal sum of , by the laws and acts of parliament of this kingdom for the time, yearly to be uplifted and taken at two terms in the year, Whitsunday and Martinmas, by equal portions, forth of all and haill [*Here insert the lands*] lying within the parochia of and sheriffdom of , or forth of any lands or heritages whatsoever pertaining and belonging to *C*, wherever the samen lie, within this kingdom, or forth of any part or portion thereof, first, best, and readiest maills, farms, profits, and duties of the same, specified and contained in an heritable bond granted by the said *C*, in favour of the said *A*, of the date the , registrate in , and in the said *A*, his seisin following thereon, dated the day of , duly registrate conform to the act of parliament ;

together with all right, title, interest, claim of right property, and possession, petitory and possessory which the said *A*, or his heirs and successors, have, or anywise may have, claim, or pretend to the foresaid annualrent, or to any portion thereof, in time coming providing always the same annualrent be redeemable by the said *C*, and his foresaids, conform to the clause of reversion contained in the said heritable bond; as the said disposition, containing an obligation to infeft, procuratory of resignation, assignation to the principal sum of \_\_\_\_\_, whereupon the said annualrent is redeemable, and to the said heritable bond, and seisin following thereon, also containing the precept of seisin after inserted, at more length purports."

### *Narrative of an Heritable Bond.*

"—— Having, &c. an heritable bond, of the date \_\_\_\_\_, and containing the precept of seisin after inserted, made and granted by the said *A*,\* to and in favour of the said *B*, and his heirs and successors after mentioned: whereby (for the causes therein specified) the said *A* bound and obliged him, his heirs and successors, with all convenient diligence upon his own proper charges and expenses, to duly validly, and sufficiently infeft, vest, and seize the said *B*, his heirs and assignees whatsoever, heritably and under reversion, in manner after mentioned, in all and hail an annualrent of \_\_\_\_\_ sterling, or such an annualrent as should be due for, or correspond and be agreeable to the principal sum of \_\_\_\_\_ money foresaid, by the laws and acts of parliament

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\* If there be cautioners in the heritable bond, add these words.—"As principal, and \_\_\_\_\_ and \_\_\_\_\_ as cautioners, and soverties for and with him, conjunctly and severally."



of this kingdom for the time, yearly, to be taken at two terms in the year, Whitsunday and Martinmas, by equal portions, forth of all and haill the said *A* his lands of [*Here insert the lands*], lying within the parochin of \_\_\_\_\_ and sheriffdom of \_\_\_\_\_, or forth of any other lands or heritages pertaining and belonging to the said *A*, wherever the same lie, within this kingdom, or forth of any part or portion thereof, first, best, and readiest maills, farms, profits, and duties of the same; as the said heritable bond, of the date foresaid, containing procuratory of resignation, obligation by the said *A* to the said *B*, and his foresaids, for payment making to them of the foresaid annualrent, they as well not infeft as infeft, at the said two terms in the year, by equal portions, as said is, beginning the first term's payment thereof at the term of Martinmas next to come, for the first half-year preceding, and so forth yearly and termly during the not redemption; with a clause of reversion, whereby the said annualrent is redeemable upon payment or consignment of the foresaid principal sum, in manner, and upon the premonition therein mentioned; together also with a clause of absolute warrandice, and precept of seisin after specified, with several other usual clauses, at more length purports."

*Narrative of a Contract of Feu.*

" — Having, &c. an contract of feu and alienation, made and passed betwixt *A* and *B*, on the one and other parts, of the date \_\_\_\_\_, containing the precept of seisin after inserted; whereby (for the causes therein specified) the said *A* sold, annailzied, and disposed, and in feu farm and heritage did let and demit, to the said *B*, his heirs and assignees whatsoever, heritably and irredeemably, but any manner of reversion, redemption, or regress for ever, [*if there be any provisions, add*],—"with and under the provisions and con-

ditions after mentioned"], all and hail [*Here insert the land*], lying within the parochin of \_\_\_\_\_ and sheriffdom of \_\_\_\_\_, together with all right, &c. which the said *A*, or his predecessors, authors, heirs, and successors, had, have, or anywise may have, claim, or pretend to the lands and others above written, with the pertinents, or any part or portion thereof, or to the maills, farms, profits, and duties of the same, in time coming [*If there be any provisions, add*],—and that with and under the provisions and conditions after mentioned, viz. [*Here insert the provisions; then say*],—as the said contract of alienation and feu, containing therein obligation to infeft, clause of absolute warrandice and precept of seisin under written, with several other clauses, at more length purports."

### *Narrative of a Contract of Wadset.*

" — Having, &c. a contract of wadset, made and passed betwixt the said *A* and *B*, on the one and other parts, of the date \_\_\_\_\_, and containing the precept of seisin under written; whereby (for the causes therein specified) the said *A* sold, annailized, wadset, impignorated, and disposed from him, his heirs, and all other his assignees, heritably, and under reversion, in manner therein and after mentioned [*If there be any provisions, say*, " and with and under the provisions, &c. under written"], all and hail [*Here insert the lands*], lying within the parochin of \_\_\_\_\_ and sheriffdom of \_\_\_\_\_, with all right, title, interest, claim of right, &c. which the said *A*, his authors and predecessors, their heirs and successors, had, have, or anywise may have, claim, or pretend to the lands and others above written, with the pertinents, or to any part or portion thereof, or to the maills, farms, profits, and duties of the same, in all time coming, during the not redemption; providing aiways, that the said lands and others above

written, be redeemable by the said *A* from the said *B*, and his foresaids, by payment or consignment of the sum of           sterling, upon the premonition, in manner, and conform to the clause of reversion specified and contained in the said contract of wadset, [*Or you may narrate the clause of reversion at length, and then say, if there be any provisions*],—and with and under the special provisions, &c. after specified, viz. [*Here insert the provisions*], as the said contract, of the date foresaid, containing therein an obligation to infest, by double infestments, and two manners of holding, *a me* and *de me*, with procuratory of resignation, clause of absolute warrandice, assignation to the mailles and duties, writs and evidents, during the not redemption, with the precept of seisin after inserted, and several other clauses, at more length purports.”

*Narrative of a Contract of Marriage.*

“ — Having, &c. a contract of marriage, made and passed betwixt the said *A*, with the special advice and consent of *B*, his father, and the said *B*, for himself, and as taking burden in and upon him for his said son, and them both with one advice and consent, on the one part, and the said *C*, with the special advice and consent of *D*, her father, and the said *D*, for himself, and as taking burden in and upon him for his said daughter, and them both with one advice and consent, on the other part, of the date           , and containing the precept of seisin under written; whereby (for the causes therein specified) the said *A*, with advice and consent of his said father, and the said *B*, for himself, his own right and interest, and taking burden on him for his said son, and they both with one advice, consent, and assent, bind and oblige them, their heirs and successors, with all convenient diligence, and upon their own proper charges and expenses, to duly, valdly, and sufficiently infest and seize the *C*, his said spouse,

for her liferent-use, during all the days of her lifetime, after his decease [*and if there be any provisions, say*],—and with and under the provisions and conditions therein and after mentioned, in all and hail [Here insert the lands, or annuity upliftable forth thereof, as in the obligation to infest, verbatim], and that by two kinds of infestments, *a me vel de me*, in manner at length mentioned and contained in the said contract-matrimonial; as the same, of the date foresaid, containing therein procuratory of resignation, clause of absolute warrandice, precept of seisin under written, and several other clauses, at more length purports.”

*Nota*, That sometimes the disposition, contract, or charter, is made, with consent of parties having interest, in favour of a person and his wife in conjunct fee; the form whereof is here set down.—

*Narrative of a Right made with Consent of Parties.*

“ — Having, &c. a disposition, of the date , and containing the precept of seisin under written, made and granted by the said *A*, with the special advice of *B*, his father, and *C*, his mother, for all right of liferent, conjunct fee, terce, or other right whatsoever, which they, or either of them, have or can pretend to the lands and others after specified, or to any part or portion thereof, or to any annualrent or annuity upliftable forth of the same, or to the maills, farms, profits, and duties thereof, in time coming, in favour of the said *A*, and *D*, his spouse, and longest liver of them two, in conjunct fee and liferent, and to *E*, their eldest lawful son, and the heirs-male of his body, in fee; which failing, to *F*, their second lawful son, and the heirs-male of his body; which failing, to the other heirs-male procreate, or to be procreate, of the said *A* his body; which also failing, to his other nearest lawful heirs

and assignees whatsoever ; whereby (for the causes therein specified) the said *A*, with advice and consent of the said *B*, his father, and *C*, his mother, for their respective rights and interests above mentioned, and the said *B* and *C*, for themselves, their own rights and interests, and all of them with one consent and assent, sold, annailzied, and disposed, to and in favour of himself, and *D*, his said spouse, and longest liver of them two, in conjunct fee and liferent, and to the said *E*, &c. [*as above*], heritably and irredeemably, with and under the provisions and conditions under written, all and hail," &c.

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## TITLE V.

### OF INSTRUMENTS OF RESIGNATION.

HAVING in the three foregoing titles amply treated of instruments of seisin, I come now to discourse of instruments of resignation, which are twofold ; either *ad perpetuam remanentiam*, or *in favorem*.

Resignation *ad perpetuam remanentiam* is a delivery or resigning of the lands into the hands of the superior himself, or one commissioned by him, so as that the right of property may be united and consolidate with the right of superiority.

Resignation *in favorem* is likewise a resigning of the lands into the hands of the superior, but not so as to consolidate the right of property with that of the superiority ; for here the fee is not extinct, but either renewed or transferred.

Resignations *ad perpetuam remanentiam*, being an extinction of the vassal's infeftment, must be perfected by an instrument of resignation in the hands of a Notary ; which no other writ, nor acknowledgment

of the vassal, nor any deed done otherwise, can prove or supply : Wherefore this sort of resignation is completed by the instrument of resignation itself alone. And after this resignation is made, the superior's simple renunciation, or discharge thereof, cannot revive the vassal's prior infeftment, but he must be infeft *de novo*.

Resignations *in favorem* must consist of three parts.—1. The renunciation of the party-resigner in favour of a third party. 2. The acceptance of the superior. 3. The delivery and investiture made to him in whose favour the resignation was granted. Nor is the first of these of any force or effect, unless the others follow and are completed : for if the person who resigns the lands, shall make two several resignations at different times, he who is first infeft, although by virtue of the last resignation, will be preferred.

Craig, *lib. 3, dieg. 1, § 17 & 18*, gives this as his opinion ; although he shews that it was otherwise decided in the case of a burgess in Perth, who making a second resignation in favour of his son, though twenty years after the first, the last resignation was found null, as granted by one who had already divested himself of all right he had to the lands, by a former resignation, albeit the person in whose favour the first resignation was granted, had not completed his right by infeftment ; and adds, that before this decision it was never doubted by our ancestors ; but that, in the case of two several resignations, he who obtained the first seisin would be preferred. And this seems to be supported by what my Lord Stair says upon this head in his *Institutions, lib. 3, tit. 1, § 12*, and by a later decision there cited, observed by Durie, *p. 225*, where one having disposed his lands, and resigned the same in favour of the purchaser, thereafter the seller disposes the same lands to another ; who, after the procuratory of resignation, takes seisin before him who acquired the first alienation ;

and by virtue of his first seisin, he who acquired the second right, becomes in possession of the lands. And albeit it was pled, in support of the first right, that his seisin, although a short space after the other's, ought to be drawn back to the date of the preceding procuratory of resignation; and that the possession ought not to be respected, in regard it was but a year past since the first of their rights was made, and there were few weeks betwixt the dates of their seisins; notwithstanding the prior seisin was sustained, albeit it was a base infeftment granted to be holden of the annailzier, and the other a public infeftment, proceeding upon resignation, to be holden of the superior. And in a double poinding, Thomson *contra* Kilgour, 24th January 1628, observed by Durie, where Thomson's right depended upon a procuratory of resignation made in his favour by Kilgour's author, for infeftment to be given to him of an annualrent, divers years before the heritable right made to Kilgour; to the which date of the preceding procuratory he alleged, that his seisin should be drawn back, and that he should be preferred to Kilgour; especially seeing, since the said procuratory, he had uplifted the mails and duties of the lands for satisfying of his said annualrent divers years, which ought to corroborate his right in this possessory judgment; seeing also that his seisin, which depended upon that procuratory, was but four days after Kilgour's seisin; notwithstanding whereof the Lords preferred Kilgour. For a further illustration of this head, see Sir James Stewart's *Answers* to Dirleton's *doubts*, p. 262 & 263, as also Mackenzie's *Institutions*, b. 2, tit. 7, § 17, where he tells us, that the first infeftment upon the second resignation will be preferred to him who has but the second infeftment upon the first resignation. See *act* 105, *parl.* 7, Ja. V, and *act* 140, *parl.* 12, Ja. VI, and Mackenzie's *Criminals*, tit. 28, where you will find that superiors were punishable who received double resignations.

Resignation then being either an extinction, when it is granted to the superior *ad perpetuam remanentiam*; or a renewal, when the vassal resigns the lands for new infeftment to be granted to himself, as when lands hold ward, the vassal perhaps resigns them so as they may be returned blench, or the like; or a transference of the fee, when the lands are resigned in favour of an assignee; there are some solemnities necessary to the completing thereof; and as I cannot better oblige such of my readers as have not opportunity of consulting our law-books upon this head, I shall here present them with the most material solemnities, as they are in my Lord Stair's *Institutions*.

Resignation must proceed upon a disposition, or procuratory of resignation, having in it the effects of a disposition; for the instrument of resignation being but the assertion of a Notary, will not be sufficient alone without an adminicle in writ. Of these procuratories *per se*, an example shall be given in the title upon *procuratories*.

The second step in resignation is the act of resignation itself; which necessarily must be by way of instrument of a Notary, expressing the warrant of it, viz. the disposition, if it be done by the resigner *propriis manibus*; or the procuratory, if it be done by a procurator; and that, conform thereto, the resigner, or procurator, compeared personally before the superior, or his commissioner having special warrant to receive resignation; and that the resignation was made in the hands of the superior by staff and batton, delivered by the resigner, or his procurator, to the superior, as the token or symbol of the thing resigned; and that the same was accepted and received by the superior, or his commissioners, by taking the said symbol in their hands, for new infeftment to be given to the acquirers. This resignation is made by the vassal, or his procurator, on their knees; and, accordingly, is in the instrument said to be done with



all humility; and that the superior, or his commissioner, delivered the staff as the symbol of the fee to the acquirer; which is also expressed in the instrument.

The solemnities of resignation are so effectual and necessary, that the omission of any of them annulleth the resignation; and, therefore, renunciation without a formal resignation, though it may be sufficient against the renouncer, yet it is not sufficient to take away infeftment renounced against singular successors; nor can it constitute any real right in the person of the acquirer, unless he had *aliunde* another standing right in his person. And the reason is, because *jura eodem modo destituuntur quo constituuntur*; and, therefore, as infeftments cannot be constitute without an instrument of seisin, so they cannot be destitute without an instrument of resignation, or, at least, another instrument of seisin with the superior's confirmation. Instruments of seisin and resignation have a resemblance and coherence together in several essentials, viz. as seisin may be given either to the vassal or his procurator, so may the resignation be either to the superior, or his commissioners authorized for that effect. And though instruments of resignation use to be by procurators warranted by a procuratory of resignation; yet as there may be seisins given by the superior *propriis manibus*, so may there be resignations by the vassal. And likewise they agree in this, that neither an instrument of seisin nor resignation are sufficient, without a warrant or admicicle in writ; and, therefore, by *acts 38, parl. 6, and 81, parl. 19, Q. Mary*, it is statute, that in all resignations *ad perpetuam remanentiam* made by procuratories, the said procuratory shall be subscribed by the vassal; and if he cannot write, must be subscribed with his hand at the pen led by an authentic Notary: and if the resignation be made by the vassal personally, the instrument must be subscribed by him; and if he cannot write, must be subscribed with his hand

at the pen led by a Notary in manner foresaid; and that no resignation *ad remanentiam* is to have strength in times to come, otherwise than as above specified.

The reason that the parties, as well as the Notary, subscribe the instrument, is, because the subscription of the instrument is in that case the only probation of the warrant thereof; but if there be a disposition or obligation to infeft, the instrument of resignation, though not subscribed by the resigner, will be sufficient, as warranted by the disposition or obligation: as also, by *act 5, parl. 3, Ch. II*, all instruments of resignation, as well as those of seisin, must be subscribed by the witnesses inserted and designed, otherwise they are declared null. See *p. 85*.

But still there is a material difference betwixt instruments of seisin and resignation: For seisin must necessarily be taken upon the ground of the lands, naturally, or by union; but resignation may be given and taken any where, although not upon the ground of the lands. As also, they formerly differed with respect to the registration; for there was no legal necessity for the registration of resignations, until that by *act 3, parl. 2, Ch. II*, it was statute, that instruments of resignation *ad remanentiam* be registrate within sixty days after the date thereof, in the same way and manner as renunciations, seisins, or reversions; otherwise the said resignation to be null; but instruments of resignation of tenements, lands, and fishings, holden in free burgage, being registrate in the town-court books of the burgh, do not fall under the certification of this act.

The parliament 1693, considering that procuratories of resignation do by the death of the granter become void, whereby, for obtaining the same renewed, unnecessary expense is occasioned; for preventing thereof, by the 35th act of that parliament it is statute, that procuratories of resignation, granted, or to be granted, shall be sufficient warrants for making resignation in favour of the receiver himself, or of his heir retoured on a general service, or of his assignee, by disposition

and assignation, or by adjudication, as well after, as it would have been before the death of the granter, provided the instrument taken upon the resignation made after the granter's death mention, and therein deduce the title of the person in whose favour it is made; otherwise to be null. Upon the whole, the solemnities of instruments of resignation may be comprehended under the following heads.—

1. All instruments of resignation having the common beginning, must bear the date, as instruments of seisin.

2. That in presence of the superior himself, or a full number of his commissioners convened, and in presence of the Notary and witnesses, compeared personally a procurator, mentioned in the procuratory of resignation.

3. That the procurator resigned the lands (here to be particularly mentioned) in the hands of the superior, or his commissioners, in favour, and under what reservations, as in the procuratory; and that by warrant of a procuratory contained in such a writ, passed betwixt such and such persons, dated       ; and that this resignation was made, by deliverance of staff and baston, (as a symbol), in the hands of the superior, or one of his commissioners, in name of the rest.

4. That the superior, or his commissioners in his name, accepted the resignation, and gave, granted, and disposed the lands (here mentioned in general) to the persons in the procuratory, conform to a charter to be made thereupon; and that by redelivering the foresaid staff and baston, which is the symbol.

5. That the procurator took instruments in the Notary-public's hands.

The rest as in instruments of seisin.

*Instrument of Resignation of Lands by one in the King's Hands, in Favour of himself, and his Heirs, with a Reservation of his Lady's Liferent.*

“ IN the name of GOD, Amen. Be it known to all men, by this present public instrument, that, upon the day of                      one thousand eight hundred and ten years, and of the reign of our Sovereign Lord George III, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, the 50th year, in presence of the Right Honourable L, Esquire, Lord Chief-Baron, and remanent Barons of his Majesty's Court of Exchequer, in that part of Great Britain called Scotland, having full power and commission from his Highness to receive resignations of lands and others within Scotland, (holden of his Majesty), in his Highness's name, and grant new infestments thereupon, being convened in full number in the Exchequer-house within the burgh of Edinburgh, where the said Lords are accustomed to meet and sit in Exchequer, and in presence of me Notary-public subscribing, and witnesses after nominate, compeared personally P, one of the ordinary macers before the said Court of Exchequer, as procurator specially constitute by A of                      , heritable proprietor of the lands and others after mentioned, by his procuratory of resignation after written, to the effect after specified; and there the said P, procurator foresaid, with all humility and condign reverence as became him, resigned, surrendered, upgave, overgave, and delivered, all and haill [*Here insert the lands*], together with all right, title, interest, claim of right, property, and possession, petitory and possessory, which the said A, his heirs and assignees, had, hath, or anywise might claim or pretend thereto, or to any part thereof, in the hands of the said Lords Barons of Exchequer, as in the hands of his Majesty, immediate lawful superior thereof; in favour and for new infestment of the same, to be

made and granted to the said *A*, his heirs-male lawfully procreate or to be procreate of his own body, and the heirs whatsoever lawfully to be procreate of their bodies; whom failing, to the heirs-female procreate or to be procreate of the said *A* his body, and the heirs of their bodies; the eldest heir-female always succeeding without division, and being always obliged to marry a gentleman of the surname of *A*, or of any other surname, who, and the heirs to be procreate betwixt them, shall successively and perpetually, in all time thereafter, be obliged to take upon them, retain, use, and carry the arms and surname of *A*; wherein if they fail, they shall amit and tine all benefit of the lands, barony, and others above mentioned, both principal and warrandice, and the same shall accresce and pertain to his next apparent heir of tailzie, who shall have right to the lands and others above specified, sicklike as if the party failing had never been infest therein, nor had right thereto, and shall have power to pursue actions of reduction, declarators, adjudications, and all other actions necessary for establishing the rights of the lands and others above written in their persons, upon the fore-said contravention: and failing of heirs-female of the said *A* his own body, then to any person or persons that he hath already, or shall now, or at any time hereafter, nominate, design, or appoint his heir or heirs of tailzie, by a writ under his hand, to succeed to his lands, barony, and others above rehearsed; and under such provisions, restrictions, and qualifications, as shall be contained therein, which the person so to be nominated shall be holden to perform and fulfil: and failing of such nomination, or the same being made, and thereafter revoked or cancelled by him, (which shall always be in his power during his lifetime), then to his nearest heirs or assignees whatsoever, heritably and irredeemably, in due and competent form: providing always, that the said heirs, as well male as female, of his own body, as the heirs to

be contained in the said nomination, shall be obliged and liable, likeas, by acceptation of the infeftment to follow hereupon, they oblige themselves to perform and fulfil the haill obligements, qualifications, restrictions, and reservations, mentioned in a bond of provision granted by him, of the date \_\_\_\_\_, and relative to the foresaid procuratory of resignation, and for fulfilling whereof the said procuratory is granted: reserving always to *B*, spouse to the said *A*, her liferent of the foresaid lands, and that in lieu and place, and in full contentation and satisfaction to her, of all whereunto she is provided by her contract of marriage, as is expressly mentioned in the disposition of the said lands and barony, made by \_\_\_\_\_ to the said *A*, and charter following thereupon; which contract of marriage the said *B*, spouse to the said *A*, by acceptation of the liferent-infeftment toresaid, hereby reserved to her, doth *simpliciter* and absolutely discharge; by virtue of, and conform to a procuratory of resignation made by the said *A*, in favour of himself, and his heirs and successors above written, of the date at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_ , for resigning the lands, barony, and others above mentioned, in manner, and to the effect above specified; and that by deliverance made by the said *P*, procurator foresaid, of staff and baston, as use is, in the hands of the said *L*, Lord Chief-Baron of the foresaid Court of Exchequer, for himself, and in name and behalf of the remanent Lords thereof: which resignation being so made, as also accepted and received by the said *L*, Lord Chief-Baron, for himself, and in name and behalf of the remanent Barons of Exchequer, they have granted and disposed to the said *A*, and his above rehearsed, heritably and irredeemably, the lands, barony, burghs of barony, and others above mentioned, conform to the charter to be made to them thereupon by his Majesty, under his great seal of the foresaid kingdom, with consent of the Lords Commissioners above expressed, in due and

competent form; and that by deliverance by the said *L*, Lord Chief-Baron, and that for himself, and in name and behalf above mentioned, of the foresaid staff and baston, as use is, in the hands of the said *P*, procurator above specified, personally present, and receiving the same, as attorney for, and in name and behalf of the said *A*. Upon which haill premises the said *P*, as attorney and in name and behalf foresaid, asked and required instruments, one or more, of me, Notary-public subscribing These things were done within the foresaid Exchequer-house, in Edinburgh, between                      and                      hours in the forenoon, day, month, year of God, and of the king's reign *respective* above specified, in presence of *C. D, E, and F*, witnesses specially called and required to the premises."

*Instruments of Resignation in favorem in the Hands of the Barons of Exchequer, with Several Variations.*

"IN the name of GOD, Amen. Be it known to all men, by this present public instrument, That upon the                      day of                      one thousand eight hundred and ten years, and of the reign of our Sovereign Lord George III, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, the 5<sup>th</sup> year, in presence\* of the Right Honourable *L*, Esquire, Lord

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\* But if a subject be superior of the lands, at the compearance, say,—“ in presence of *A*, an high and mighty prince, Duke of                      , or a most noble and potent Marquis of                      , or a noble and potent Earl, or noble Lord, &c, superior of the lands and others under written.” But if resignation be made in the hands of a commissioner for a superior by a special commission, in the compearance, say,—“ in presence of                      , commissioner lawfully constitute by                      , superior of the lands and others under written, conform to his special commission granted for that effect, of the date                      .”

Chief-Baron, and remanent Barons of his Majesty's Court of Exchequer, in that part of Great Britain called Scotland, his Majesty's commissioners, having full power and commission from his Highness to receive resignations of lands and others within Scotland, (holden of his Majesty), in his Highness's name, and grant new infeftments thereupon, being fully convened in the Exchequer-house within the burgh of Edinburgh, where the said Lords are accustomed to meet and sit in Exchequer, and also in presence of me, Notary-public, and witnesses after mentioned, compeared personally *P*, one of the ordinary macers before the said Court of Exchequer, as procurator for *B* of , to the effect under written specially constitute, by his letters of procuratory of resignation\*

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\* If the disponent himself is not infeft upon the procuratory in the disposition to him, in that case the procuratory must be particularly assigned, whereby the purchaser may resign. Likewise, if the purchaser die before resignation follow in his favour, in that case, conform to act 35, parl. 1693, a general service gives the heir right to the procuratory of resignation, as also to the precept of seisin. In the first of these cases, you must add,—“ contained in the letters of alienation and disposition of the lands and others under written, made and granted by the said *B*, then heritable proprietor thereof, to and in favour of *C*, his heirs or assignees, heritably and irredeemably, dated the            day of            years, and now assigned and disposed by the said *C* to and in favour of *D*, conform to his disposition and assignation, of the date the            day of            years.” And in the other case, say,—“ contained in the letters of alienation and disposition, &c. to and in favour of the deceased            , his heirs and assignees, heritably and irredeemably, of the date            , to whom *E* now of            , as heir served and retoured in general, conform to his retoured service, dated            , has good and undoubted right to the lands and others contained in the disposition, and to the procuratory of resignation therein specified.”



after specified; and there, with such due reverence and humility as became the said *P*, procurator foresaid, *genibus flexis*, by virtue of the said procuratory,\* purely and simply, by staff and baston, as use is, renounced, resigned, surrendered, *simpliciter* upgave and overgave, from the said *A*, his heirs and assignees,† all and haill [*Here insert the lands as in the disposition and procuratory, and then say*],—lying within the parochin of \_\_\_\_\_ and sheriffdom of \_\_\_\_\_, together with all right, title, interest, claim of right, property, and possession whatsoever, which he and his predecessors

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And if a subject be superior of the lands, in place of *P*, *one of the macers*, &c. insert the procurator's name and designation, always observing this where it occurs; but if resignation be made *propriis manibus*, the vassal or proprietor's name is to be inserted in place of the procurator's.

\* And in these two cases, where the purchaser is not infest, or dies before infestment, say,—“disposition [or general service] above specified, conform to the act of parliament.”

† If the disposition or procuratory contain a tailzie, or provisions and irritant and resolute clauses, say,—“with and under the special provisions, reservations, and reversions [*if any reversions be reserved to the granter of the right to redeem from the person in whose favour the same is granted*] after mentioned, allenary, and no other ways.” If it is an annualrent that is resigned, add,—“all and haill an yearly annualrent of \_\_\_\_\_ sterling, or any other annualrent which by any other supervenient law for the future shall be agreeable and correspond to the principal sum of \_\_\_\_\_ sterling, borrowed and received by the said *A* from *H*, yearly to be uplifted and taken at two terms in the year, Whitsunday and Martinmas, by equal portions, forth of all and haill [*Here insert the lands, and the parish and sheriffdom in which they lie, and add*],—or forth of any part or portion of the same, first, best, and readiest of the maills, farms, kains, casualties, profits, and duties thereof; redcemable always, and under reversion, in manner after mentioned.”

and authors, their heirs and assignees, had, have, or anywise may have, claim, or pretend thereto, or any part thereof, in time coming ;\* in the hands of the said Lords Barons of Exchequer, his Highness's commissioners, in his Majesty's name, as in the hands of our said Sovereign Lord, immediate lawful superior thereof ; in favour, and for new infeftments of the same, to be made, given, and granted back again to J,† his heirs or assignees whatsoever, heritably and irredeemably, ‡ in such due and competent form as effeirs ; and that conform to the patent letters of pro-

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\* If resignation be made by virtue of two or more procuratories, here you must add,—“ and suchlike compared personally the said P, as procurator for Q, to that effect specially constitute by the said Q, according to the letters of procuratory contained in a disposition,” &c. If a subject be superior, say,—“ in the hands of the said , immediate lawful superior of the lands and others above written, or the said commissioner specially constitute by the above , superior foresaid.”

† And if it be lands wadset, say,—“ J, his heirs and assignees, heritably, redeemable,” &c. [*Here take in the clause of reversion, as in the contract of wadset ; then add*],—“ in such due and competent form as effeirs ” And if it be upon an heritable bond, the clause will be the same, only with this difference, that the clause of reversion, as in the heritable bond, must be narrated.

‡ And if there be a tailzie or provisions in the dispositions or procuratory, the person in whose favour the same are granted, and all the substitutes and heirs of tailzie, must be here inserted, as in the disposition and procuratory *verbatim* ; and then add,—“ heritably and irredeemably, in such due and competent form as accords : but with and under the burden of the special provisions, conditions, restrictions, limitations, reversions, reservations, irritant and resolutive clauses, after mentioned, and no otherwise,” viz. [*Here insert the restrictions, &c. and if it be a resignation of lands wadset, add*],—“ during the not redemption.”

curatory of resignation \* contained in the letters of alienation and disposition of the lands and others above written, made and granted by the said *B*, heritable proprietor of the same, to and in favour of the said *J*, and his foresaids, heritably and irredeemably, of the date ; which resignation so made, the said *L*,† Esquire, Lord Chief-Baron foresaid, for himself, and in name and behalf of the remanent Lords Barons of the said Court of Exchequer, his Majesty's commissioners foresaid, in his Highness's name admitted and accepted, by receiving of the said staff and baston from the said *P*, procurator foresaid, resigner thereof ; and then, and immediately thereafter, gave and delivered back again all and hail [Here repeat the lands, and then say],—lying in manner foresaid, to the said *P*, who also appeared as procurator and attorney for, and in name and behalf of the said *J*, whose power of procuratory was clearly known and understood by me Notary-public subscribing, to be bruikd, possessed, and enjoyed by the said *J*, and his foresaids,‡ heritably and irredeemably, in all time coming, conform to the charter to be made and grant-

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\* And if it be on a contract of wadset, add,—“ contained in a contract of wadset and impignoration of the lands and others above written, passed and perfected betwixt the said *B*, heritable proprietor thereof, and the said *J*, redeemable, and under reversion, in manner foresaid, of the date the day of years.” And if it be on an heritable bond, add,—“ to the said *J*, his heirs or assignees whatsoever, redeemable always,” &c. ; and observe the direction as above, in the case of a clause of reversion in a wadset.

† And if it be a subject superior, say,—“ superior foresaid, admitted and accepted by receiving,” &c. [Here insert the procurator's name, &c.]

‡ Or if it be on a wadset,—“ redeemable always the lands and others foresaid, in manner particularly above mentioned.”

ed\* by his Majesty to the said *J*, and his foresaids, thereupon, under his Highness's seal, appointed by the treaty of union to be kept and used in Scotland in place of the great seal formerly made use of there, in such due and competent form as accords. Whereupon, and upon all and sundry the premises, the said *P*, procurator and attorney for, and in name and behalf of the said *J*, asked and took instruments, one or more, in the hands of me Notary-public subscribing. These things were done within the said Exchequer-house, betwixt the hours of                      and                      forenoon, day, month, year of God, and of the king's reign respectively above mentioned, before and in presence of                      and                      , witnesses to the premises specially called and required."

*Instrument of Resignation ad remanentiam in his Majesty's Hands, with Several Variations.*

"IN the name of GOD, Amen, &c. In presence &c. compeared personally *P* one of the ordinary macers before the said Court of Exchequer, as procurator for *A*, to the effect under written, specially and lawfully constitute, by his letters of procuratory

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\* If it be a subject superior, add,—“ by the said                      , superior foresaid, to him, thereanent, in all points.” And sometimes the charter is instantly signed. In that case, say,—“ conform to the charter instantly presented, signed and granted by the said                      , superior,” &c. It is to be observed, that in resignations *in favorem*, as well as *ad remanentiam*, when a subject is superior, you are to notice the difference as remarked in the above instrument, and insert your procurator's name in place of the macer's, with the superior's, or his commissioners, in place of the Barons of Exchequer, and in place of the Exchequer-house, insert the particular house, and room of the house, where the instrument was taken; and then proceed as above.

*ad remanentiam*,\* made and granted by the said *A*, heritable proprietor and vassal therein, to and in favour of our Sovereign Lord the King's Majesty, and his heirs and successors, of the date the            day of            ; and there, with such due reverence and humility as became the said *P*, procurator foresaid, (*genibus flexis*), purely and simply, by staff and baston, as use is, resigned, renounced, surrendered, *simpliciter* upgave and overgave, from the said *A*, his heirs and successors, and all others his representatives and assignees, all and haill† [*Here insert the lands, with the parish and sherifffdom in which they lie; and then say*],—together with all right, title, interest, claim of right, property, and possession, petitory or possessory, whatsoever, which he, his predecessors and authors,

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\* If the lands be resigned to a subject-superior, say,—“ contained in the letters of alienation and disposition of the lands and others under written, made and granted by the said *A*, heritable proprietor and vassal therein, to and in favour of *B*, superior thereof, and his heirs and successors, of the date            .” If it be of lands wadset, say,—“ contained in the letters of discharge and renunciation, and grant of redemption of the lands and others under written.” And if it be of an yearly annualrent, add,—“ of the yearly annualrent after mentioned, upliftable forth of the lands and others after specified.”

† If it be of an annualrent, add,—“ an yearly annualrent of            , or such an annualrent as for the time did correspond to the principal sum of            , borrowed and received by the said *A* from the said *B*, conform to his heritable bond, granted by him thereanent, dated            , and his seisin thereupon, duly registrate, conform to act of parliament, of the date            ; and which yearly annualrent was by the said heritable bond appointed yearly to be uplifted and taken at two terms in the year, Whitsunday and Martinmas, by equal portions, forth of all and haill,” [*Here the lands must be enumerated as in the heritable bond.*]

heirs, successors, and assignees, had, have, or anywise may claim or pretend thereto, or to any part thereof, or to the maills and duties of the same in all time coming; in the hands of the\* said Lords Barons of his Majesty's said Court of Exchequer, his Highness's commissioners, in his Highness's name, as in the hands of our said Sovereign Lord the King's Majesty, immediate lawful superior thereof, in favour of his Majesty, and his royal successors, *ad perpetuam remanentiam*; to the effect the right of property thereof, then standing and remaining in the person of the said *A*, and his foresaids, may return to his Majesty, and his foresaids, and be conjoined, consolidated, annexed, and incorporated with the right of superiority of the same, standing and established in his Highness's person, in all time coming, and may be peaceably bruiked, enjoyed, and possessed by his Majesty, and his foresaids, and the rents, maills, and duties thereof, paid to, uplifted, used, and disposed of by them, in all time coming, and that† conform to the

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\* If a subject be superior, say,—“ said *B*, immediate lawful superior thereof, in favour of him, his heirs and successors, *ad perpetuam remanentiam*; to the effect the right and property thereof, then standing and remaining in the person of the said *A* and his foresaids, may return to the said *B*, and his foresaids, and be conjoined,” &c.

† And if it be of an annualrent, add,—“ all and hail the lands and others above specified, out of which the foresaid annualrent was appointed to be uplifted, may remain and abide with the said , and his foresaids, to be peaceably bruiked, enjoyed, and possessed, by him and them, as free of the burden of the said yearly annualrent, as if the said heritable bond had never been made or granted, nor seisin taken nor registrate thereupon, conform to the said letters of discharge, renunciation, and grant of redemption, containing the foresaid procuratory of resignation *ad perpetuam remanentiam*, shown, read, and produced, in presence,” &c.

said procuratory of resignation \* in all points. Which resignation so made, the said *L*, Esquire, Lord Chief-Baron, &c. admitted and accepted, by receiving the foresaid staff and baston in his hands, from the said *P*, procurator foresaid, resigner thereof, to the end and effect particularly above mentioned. Whereupon, and upon all and sundry the premises, the said Lord Chief-Baron, for himself, and in name of the remanent Lords Barons of the said Court of Exchequer, his Majesty's commissioners above mentioned, in his Highness's name, asked and took instruments," &c.

## TITLE VI.

OF THE ATTAINING POSSESSION BY TRADITION OR DELIVERY, AND OF THE SEVERAL SYMBOLS REQUISITE THEREIN.

BEFORE I proceed, it is necessary in this place to take notice in what manner possession is attained, and of the symbols necessary for that end; seeing it is a very essential point for a Notary, to know and understand all the different symbols used by our law and custom.

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\* If a resignation be made to a subject-superior, you may add,—“ and disposition above written, shown, read, and produced, in presence of me Notary-public, and witnesses subscribing, in all points.” Or if it be of a wadset, add,—“ and discharge, renunciation, and grant of redemption above written, shown, read,” &c.

The property of any subject is never transferred from the annailzier, until such time as the purchaser attain possession thereof by tradition; which is defined to be, *the delivery of possession by the true owner to the receiver, with a design to transfer the property to him.*

Tradition is twofold, viz. real and symbolical. Real tradition is, when the thing itself (such as corn, wine, oil, an ox, or a sheep) is delivered.

Symbolical tradition is, when the thing to be possessed is not delivered, but only somewhat as a sign or symbol thereof.

The word *symbolum*, or *symbol*, had many different significations amongst the ancients: For it signified a sign or badge to know one; a private note or watchword; as also, it signified what every one paid at his club of a feast or entertainment, as may be seen in Terence's two first plays, and also in that entitled *Phormio*.

But in this place it signifies, *the token or mark by law ordained to be used when the thing itself cannot be truly delivered.*

At what time this symbolical delivery was first introduced amongst mankind, is uncertain: but from several texts of holy writ, it seems to have been very ancient; and particularly, from the fourth chapter of Ruth, we may observe, that one kinsman's property amongst the Jews was transmitted to another, by the seller's plucking off his shoe, and giving it to the buyer; for, in ver. 7 of the said chapter, we are told, that *this was a testimony in Israel.*

As also, from the early ages of the Christian church we learn, that symbolical delivery, in investing the bishops in their temporalities, by king's and princes, was practised by the symbols of a crosier, denoting thereby the staff of command; and by the prince's placing a ring on the finger of the bishop, giving him to understand, that as the marriage of laymen, denoted by a ring, is indissolvable, a bishop in



the same manner ought to remain inseparably united to his church. The emperors of Germany, of old, had the sole power of investing the popes, they being vassals to these emperors for many years; but in process of time these investitures created a great deal of trouble and confusion both in Italy and the empire, until that the Emperor Henry V, and Pope Calistus II, made an agreement thereanent in the year 122.

Isidorus relates, that when the ancients promised any thing, they held in their hand a reed, which having broke, they again joined it, indicating thereby an acknowledgment of the agreement

The Romans not only used a certain form of words in all their solemn contracts, but likewise they had certain stated symbols, whereby their intention and meaning might be more easily understood. Thus, in adoptions or emancipations, they used a symbolical sale of their children; and in marriages they made use of fire and water, signifying, in a philosophical sense, by that symbol, the mutual love and union of the parties: and the faith and trust reposed in the wife's economy and management, was signified by delivery to her of the keys, at her arrival in her husband's house; as the taking away the keys was a symbol of divorce. And in the manumitting, or giving freedom to their slaves, they touched the person's cheek or ear, as a symbol of their freedom. And the reason of touching the ear, rather than any other part of the body, was, as Pliny relates, *Because, says he, the memory lies there.* In the interrupting of prescriptions, they used to break a twig of a tree; and in the institution of an heir, the testator gave a ring.

And moreover, we may observe the several symbols used in the coronation of kings and princes, and in the creating of nobility and knights; not to mention that memorable symbol used by Charlemagne, in joining the armorial of Scotland, viz. the *lion*, with the *flower-de-luce*, not only to preserve to posterity

the remembrance of the league by him entered into with Achaius king of Scotland, but also to perpetuate the friendship he had for the Scottish nation in particular. And from our historians we learn, that about the beginning of the eighth century, the Florentines, in regard that a *lion* was the armorial bearing of Scotland, made a law, ordaining so many lions to be maintained at the public charge, as a symbol or testimony of their gratitude and esteem for that nation; because, by the singular courage and conduct of William, brother to the above-mentioned King Achaius, they had regained their former liberty.

Symbolical tradition, by the giving of earth of the lands, seems to have been used in the eighth century, as may be learned from the following remarkable story. When the Normans (whether Sigefredus or Rollo was their commander is uncertain) arrived at the coast of Neustria, that they might have the pretence of some injury done them, to wage war against the inhabitants, they sent a young stripling ashore, adorned with a golden chain; not questioning but those who first encountered him would seize upon it, which they earnestly wished. The stripling being asked by the inhabitants, if he would sell or barter the chain? answered, he would. They having again asked him, what price he would have? he told them, he would take what price they pleased. The inhabitants, smiling at the simplicity, took the chain from him, and as the price thereof, gave him a handful of dust from the ground. But that joke cost them dear, for the stripling returning to his countrymen, and having told them what had happened, they immediately landed their forces, and took possession of the country. The inhabitants asking by what law they did that, they answered, by the best and justest of all laws. A young stripling of theirs had been publicly infest in these lands, by the delivery of earth, as the accustomed symbol; and that not without paying for them; therefore, they

took possession of their own lands, acquired by law, and not by war.

These symbols are various, according to the constitution and laws of every nation, or as the laws are altered in themselves. It has been already told, in the title of seisins, that, in Scotland, the way of giving possession before the reign of King James I, was very uncertain; and in the borough-laws, *cap.* 56, we are informed, that when any man sells his tenements or lands, *he who sells shall stand within the house, and come forth of it; and the other who buys shall stand without it, and shall enter in it; and the one shall give to the provost an penny for his passing forth, and the other shall give an penny for his entry and seisin. And if they exchange lands (be permutation) betwixt them, ilk one of them shall give twa pennies.*

The symbols at this time generally in practice with us, may be reckoned, *1mo*, Such as bear some resemblance to the subject to be possessed, and, being part thereof, have some affinity to natural possession; or, *2do*, Such as are merely supposititious, and introduced by custom, to represent the delivery or investiture.

To the first of these belongs infestments in lands, by the delivery of earth and stone thereof upon the ground of the same; and it is absolutely necessary, when a Notary gives infestment, that he and all the parties necessarily present thereat, be actually upon the ground of the lands: for Craig relates, that a seisin was found null and false, although it bore, *these things were done upon the ground of the lands*; because the parties were not upon the fixed ground thereof, but had put part of the ground of the lands within their shoes. Nevertheless this, by law or custom, may be otherwise altered in cases of necessity; as, infestments of lands lying in *Nova Scotia*, were appointed to be taken at the castle-gate of Edinburgh.

Infestments of annualrent, if it is paid in money,

the symbol thereof is earth and stone of the ground, and a penny money; but if the annual rent is paid in victual, the symbol used to signify the delivery of possession, is a parcel of victual, and earth and stone.

Infestments in corn-mills are given by delivery of the clap and happers as the symbols; and in wauk-mills, by the trams thereof. But if these mills should want the clap and happer, or the trams, the Notary must cause make somewhat as a representation thereof, which he must use in place of them.

Infestments of parsonage and vicarage teinds are, for the first, a handful of corn, stubble, straw, and grass; and for the latter, a fleece of wool, or a little wool.

Infestments in patronages of churches or chaplainries are, by delivery of a bible or psalm-book.

Symbols used in infestments of salmon, or white-fishings, are, the delivery of the tow, net, and boat.

The symbol used in the infesting of an heir in a tenement within a royal burgh holding burgage, is by hasp and staple of the door of the tenement, and earth and stone of the ground thereof.

Under the last head may be comprehended the delivery of a scroll or cap, as the symbol of a civil, and the delivery of a batton, for any military offices; the delivery of a book and key to the professor of a college in the common-hall thereof; and in the institution of ministers, the delivery of a bible within the parish-church; but as to the manse and glebe, the symbol was the same as in other infestments of lands, viz. by earth and stone; but this infestment is now in disuse.

And, lastly, are comprehended under this head, the symbols used in resignations of both kinds, viz. by staff and baston; and these symbols in resignations, by a special act of sederunt, dated 11th February 1708, are enjoined, with certification, that if resignation be made hereafter in the superior's hands, by any other symbol than staff and baston, that the Lords

will not sustain such resignations, or seisins following thereupon; but that the same shall be void and null.

This act of sederunt was made upon a competition betwixt Calderwood of Pitteadie and Sir Thomas Young of Rosebank, whose infeftment in a tenement in Edinburgh the Lords sustained, albeit it carried resignation to have been made in the magistrates hands by the symbols of earth and stone, and the procuratory bore warrant to resign by staff and baston. The reason of the decision, as given by Forbes, was, that upon searching the town-records, earth and stone appeared to have been the ordinary practice.

I come next to set down such instruments as are usually requisite for the extinction of heritable redeemable rights; but before I enter upon that subject, I thought it not improper to premise somewhat anent reversions, and give the Notary a small view thereof, as contained in our several law-books, whereby he may the more easily conceive the import and meaning of these instruments. Of all which in the next title.

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## TITLE VII.

OF REVERSIONS, AND OF THE INSTRUMENTS NECESSARY FOR THE EXTINCTION OF HERITABLE REDEEMABLE RIGHTS.

THE word *reversion* comes from the Latin word *revertor*, a reverting, or returning back again; and may be described to be,—“A real evident, by which one person obligeth himself to another, that notwithstanding he is heritably infeft in certain lands, yet how

soon the annailzier, his heirs or assignees, shall make payment to him of a certain sum of money, or consign the same in a responsal person's hand, to be forthcoming to his use upon the premonition of a competent time, that he shall hold the lands lawfully redeemed from him, and shall renounce and redispone the same in competent form in favour of the annailzier, and redeliver to him the whole rights and securities made to him thereanent."

Reversions are twofold, legal and conventional.

Legal reversions are such as descend not from the agreement of parties, but from special law or statute, as, the redemption of lands adjudged within ten years after the date of the adjudication, by *act 62, parl. 1, Cha. II.*

Conventional reversions are such as proceed from the special agreement and consent of parties, and the nature of the contract itself. And it is to be remarked, that all reversions are *stricti juris*; i. e. they must be judged of literally, and so as that the person who has the right to redeem, (who, by our law, is called the *reverser*), may not claim or get more than what is precisely expressed in the contract; which is in law, and by the judge, to be interpreted strictly; for the words thereof are not to be expounded by a benign interpretation in favour of either party, but are to be taken in their natural and ordinary signification. Besides, the tenor of the reversion is not to be extended to persons or cases not expressed: and likewise, all and every one of the provisions and conditions, &c. set forth therein must be literally observed, otherwise the order of redemption will be void.

Of old, reversions were only personal obligations, binding the person to whom the lands were wadset; and the clause of reversion was usually engrossed in the charter: for *Skene, de verb. signif.* in explaining this word, says,—That in old times the clause of reversion was inserted in the charter, as was manifest by divers charters given by K. David II, in the regis-

ters, which contain the tenor of reversion after the clause *Tenendas et habendas*, (and gives the form of such a charter, dated *in anno* 1419); but that, in his time, the charter was given by the seller of the lands, and the reversion by the buyer thereof, severally, sealed and subscribed; and the buyer kept the charter, and the annailzier kept the reversion: which form appears to have had its beginning in the days of K. Ja. III; for, in *act* 28, *parl.* 5, of that prince, the buying and selling of lands by charter and seisin, and the taking again of reversions, is called a new invention; and by the said act it is statute, that reversions shall be of force, not only against the first wadsetter himself, but also against all his successors in the wadset-lands; wherefore reversions at this time are accounted as heritable and real rights, effectual against singular successors.

Reversions being either legal or conventional, as has been told above, the restitution or redemption of them is either by a voluntary renunciation of the wadset-right, and infeftment following thereupon, or by law, when process of declarator is raised for that effect. And if the reverser shall discharge the reversion, the infeftment thereby becomes irredeemable, and ceaseth to be a wadset. And this discharge of the reversion must be registrate, as the *act* 16, *parl.* 22, Ja. VI, directs, otherwise it will not be effectual against singular successors; or if the wadsetter shall voluntarily renounce the wadset-right, that renunciation, or grant of redemption, must also be registrate, in terms of the above-cited act, otherwise it will have no effect against a singular successor in the wadset.

Declarators of redemption must be diversely gone about in legal reversions, and in conventional.

The order of redemption of adjudications by virtue of the legal reversion, is valid by premonition and consignation, and instruments taken thereupon; wherein there is not appointed a determined time upon which the premonition must be made, or a deter-

mined place where the consignation must be made, nor the person of the consignatory; but the premonition may be upon any number of days sufficient for the consignation, even though it were the same day of the premonition, as Craig observes. But if the creditor be personally apprehended, the consignation must be in the way most to his advantage, either near the place of premonition, or the lands adjudged, or the parish-kirk where they lie, or his dwelling-house; all which are accounted competent places, where consignation may be made. But if the creditor be out of the country, or have no certain abode, letters of premonition will be obtained from the Lords of Session, *periculo petentis*, for premonition to be made, upon sixty days, at the market-cross of Edinburgh, pier and shore of Leith, and for consignation to be made in Edinburgh. For by a decision, 22d February 1631, Murray *contra* Lord Yester, observed by Durie, the order was sustained for redemption of an apprising near expiring, although the consignation was only at Edinburgh, and not at the parish-kirk where the lands lay, or at the debtor's dwelling-house, he being out of the country, and Edinburgh being reputed the *communis patria* of all Scotsmen. And by another decision, 23d July 1622, Earl Desmont against Hay, also observed by Durie, the Lords found, that where the party was in the country, the order by summons of premonition, and citation personally taken thereupon, is void and null; in regard that in orders of redemptions of this nature, the requisition ought to be made by a procurator, having power from the party to require; and that instruments should be taken thereupon in the hands of a Notary, and before witnesses, as in all other redemptions.

The order of redemptions upon conventional reversions, is by premonition and consignation, or requisition and attendance.

Premonition is an act or deed, whereby the revers-



er, or his procurator authorized by a legal mandate or procuratory in writ, premonisheth the wadsetter, his heirs and successors, either universal or singular, in possession, conform to the tenor of the reversion, to appear at the place of consignation, and receive satisfaction according to the reversion. Requisition is, when the wadsetter, or other creditor, rather desire to have their money, than to retain the wadset-right, or right of annualrent. In that case they are to require their money forty days before any term, or such a number of days as are contained in the clause of requisition contained in these rights; and this is called an *instrument of requisition*; and if the debtor fail to compear at the day and place contained in the instrument of requisition, or, compearing, does not pay the money, then the creditor takes another instrument upon this order, called an *instrument of attendance*, and protests for the penalty and damages. And in either case, whether it be a premonition or requisition, it must necessarily be done by way of instrument, and no other ways; as has been observed above, in the case of Desmont against Hay.

Premonition may be upon any number of days, as parties agree, and as contained in the reversion, whether it be in a paper apart, or *in gremio juris*; but, generally, in conventional rights, it is stipulate to be upon forty days; and these days are so to be reckoned, that they be all free, without counting the day on which the premonition was made.

Premonition may be done either personally, or at the wadsetter's dwelling-house; and the particular dwelling-house must be designed in the instrument, otherwise the premonition will be null; as was decided the 13th December 1626, Earl of Buccleuch *contra* Young, observed by Durie. If the wadsetter be minor, premonition must be used against the tutors and curators, either generally, at the market-cross, or personally, by letters of supplement from the Lords of Session, and not by an instrument taken at

the market-cross, as was found the 15th June 1680, Gordon *contra* Earl of Queensberry, observed by Stair.

When one is to premonish a wadsetter, either personally, or at his dwelling-house, there must necessarily be present with the party having right to the reversion, or his procurator authorized by him, a Notary-public, and a sufficient number of unexceptionable witnesses; and there the party himself, or his procurator, exhibits the letter of reversion apart, or the writ bearing the same, which must be read over before the witnesses present; and then the procurator must deliver to the Notary his procuratory from the reverser, if the premonition be made by a procurator, which must also be read over: which done, the party, or his procurator, does premonish the wadsetter to compear, the time and place mentioned in the reversion, and there to receive payment and satisfaction in the terms thereof; all which must be carefully put in writing, and extended by the Notary, in the form of a public instrument; for if any of these be omitted, the premonition will be null.

Consignation must also be done by way of instrument, bearing the tenor of the premonition, and the production and reading thereof, together with the reading of the reversion and procuratory, the same way as is before said of the premonition, and the coming to the place upon the day prefixed in the reversion and instrument of premonition, which may be any time of the day; and, therefore, the wadsetter must attend that day from mid-day to sunset; and upon the wadsetter's refusing to renounce, or not appearing, the particulars contained in the reversion, immediately after sunset, are to be consigned, according thereto, upon public intimation, by calling the wadsetter at the most patent door; which must be done *in forma specifica*, and not *per equipollens*. See *Stair's Instit. lib. 2, tit. 10, § 18*.

The order of redemption being thus lawfully used,

the action thereupon is a declarator of redemption; because it is the order that constitutes the redemption, and the declarator but finds and declares it to be orderly proceeded, and decerns the wadsetter to denude himself conform thereto; and, therefore, though the reversion be personal, excluding assignees, if that person once use the order, he may assign it, and dispose the lands as redeemed; and the assignee, even at any time, will have interest to declare, as was decided 29th July 1623, Earl Marischal *contra* Keith, and 3d March 1630, Murray *contra* Myles; as also, see the 6th February 1630, Muir *contra* Muir, all observed by Durie.

The effect of declarator of redemption is, that it makes the redeemed lands belong to the redeemer, and makes the sums consigned moveable, and to belong to the wadsetter's executors, if he hath accepted the consignation, or if declarator doth follow in his lifetime; but if declarator do follow after the wadsetter's death, the consigned sums will not belong to his executor, but to his heir, who remains proprietor of the wadset; but if declarator passes in the wadsetter's life, it takes away the real right of wadset; so the money comes to be in the property of the wadsetter as moveable, and falls to his executors; which, until declarator, is not so, seeing the order may be passed from. Thus far concerning reversions. Let us now proceed to the instruments themselves, the several procuratories requisite and usual being fully treated of in the next title.

### *Instruments of Premonition.*

“AT, &c.\* In presence of me, Notary-public, and witnesses subscribing, compeared personally A, as

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\* Some Notaries are accustomed to begin these instruments with the invocation, in the same manner as seising.

procurator specially constitute, for and in name and behalf of *B*, conform to the letters of procuratory granted to him thereanent, of the date \_\_\_\_\_, and passed with me the said Notary-public and witnesses after specified, to \* the personal presence of *C*, heritor † of the lands and others after mentioned,

\* But if the party cannot be found personally, then he must be cited at the place of his abode; which place must be particularly pointed out in this manner.—“*M*, the mansion-house of \_\_\_\_\_, lying in the sheriffdom of \_\_\_\_\_, and parish of \_\_\_\_\_, at which place the said *C* and his family presently reside.”

† If the premonition be to an annual-renter to receive the sum, upon payment of which the right is redeemable, then say,—“annual-renter and heritor of the yearly annual-rent after mentioned, upliftable yearly forth of the lands and others under written, lying in manner after specified, having and holding in his hands [*ordinarily in these kinds of rights there is no separate letter of reversion, but the extract of the seisin to follow upon the heritable bond, in which the reversion is engrossed, by a special clause in the bond, is declared sufficient for using the order of redemption; and in this case, the seisin must be extracted and narrated as follows*] an extract of a seisin, under the hand of \_\_\_\_\_,

\_\_\_\_\_, clerk to and keeper of the particular register of seisins, kept at \_\_\_\_\_ for the shire of \_\_\_\_\_, (which, by the heritable bond under written, is declared sufficient for using the order of redemption of the annual-rent after specified), following upon an heritable bond, granted by the said *B* to the said *C*, under the sign and subscription of \_\_\_\_\_, N. P. of the date the \_\_\_\_\_ day of \_\_\_\_\_ years, duly registrate in the

said particular register of seisins, &c. upon the day of \_\_\_\_\_ thereafter. By the which heritable bond the said *B*, having bound and obliged him, &c. [*Here narrate the bond, and then add*], as the said heritable bond, and seisin following thereupon, more fully purport.” But if it be to premonish an adjudger, say,—“adjudger of the lands and others after mentioned, having and holding in his hands an extract of a decret of adjudication,

having and holding in his hands a contract of wadset,\* made and passed betwixt the said *B* and *C*, on the one and other parts, dated \_\_\_\_\_, whereby (for the causes therein specified) the said *B* sold, annailzied, impignorated, and disposed, &c. [*Here narrate the contract of wadset, and clause of reversion therein contained, in the same manner as in the procuratory; and then add*], as the said contract of wadset more fully bears; and suchlike, having and holding in his hands, the foresaid letters of procuratory, made and granted by the said *B* to the said *A*, authorizing and empowering him to make the premonition after specified, and follow forth the hail order of redemption in manner under written. Which † contract of wadset, containing the clause of reversion above mentioned, together with the procuratory above expressed, the said *A*, procurator aforesaid, gave and delivered to me Notary-public, to be read and published in presence of the witnesses under written; and which accordingly I did. After the production, exhibition, and public reading of which contract of wadset and procuratory above mentioned, the said *A*, as procurator aforesaid, in name and behalf of the said *B*, made due and lawful intimation and premonition to the said *C*, to compear upon Whitsunday

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obtained at the instance of the said *C*, against the said *B*, before the Lords of Council and Session, of the date \_\_\_\_\_; whereby the said Lords adjudged, decerned, and declared the ground-right and property of all and hail," &c. Here narrate the decret of adjudication, with the charter and infeftment following thereupon.

\* If the letter of reversion be on a paper apart, it must be here deduced and narrated.

† Or,—“extract of the seisin above mentioned, bearing the reversion above specified, together with the procuratory above expressed, the said *A*,” &c. Or,—“decret of adjudication, together with the procuratory,” &c.

eve\* next to come, betwixt sun-rising and down-passing thereof, within the new session house of Edinburgh, at that place where the commissaries use to sit in judgment; and then and there to receive from the said *B*, or his procurators in his name, the foresaid sum of \_\_\_\_\_; and that for the redemption of the said lands and others contained in the said contract. And suchlike, the said *A*, procurator foresaid, requiring the said *C* to bring along with him, the time and place foresaid, the † contract of wadset above written, and infestment following thereupon, with an sufficient renunciation and grant of redemption of the same, in favour of the said *B*, and his heirs and successors; all to be delivered up to the said *B*, or his procurators in his name, the time and place foresaid; with certification to him, if he failzie to com-

\* Or if it be for redemption of lands adjudged, say,—  
 “within the said *C* his dwelling-house of \_\_\_\_\_,  
 in the shire of \_\_\_\_\_, [or, “the parish-kirk of \_\_\_\_\_,  
 within which the lands and others adjudged do lie”], upon the \_\_\_\_\_ day of \_\_\_\_\_ years next to come, betwixt sun-rising and down-lapsing thereof; and then and there, to accept and receive from the said *B*, or his procurators in his name, the foresaid sum of \_\_\_\_\_ money foresaid, with the expenses of the infestments, and composition to the superiors; an account whereof the said *A*, procurator foresaid, did require from the said *C*, to the end the same, in case of absence or refusal, may be consigned in manner after mentioned; and that for the lawful redemption, loosing, and outquitting from the said *C*, of all and hail the lands and others above adjudged, lying as said is. And suchlike, the said *A*, procurator foresaid, required the said *C* to bring along with him, the time and place foresaid, the decret of adjudication above mentioned, with the abbreviate thereof, grounds of the same, and infestments following thereupon, with a sufficient renunciation,” &c.

† Or,—“heritable bond above written,”

ar, or, compearing, should refuse to grant the foregoing renunciation, and deliver up the same, with the writs above specified; then, and in either of these cases, the said *B*, or his procurator in his name, would consign the sums of money above mentioned, in the terms,\* and after the form and tenor of the reversion above written in all points. Whereupon, and all and sundry the premises," &c.†

*Instrument of Premonition for Redemption of Lands wadset, at the instance of Tutors, and containing Letters of Supplement against Tutors and Curators, &c.*

"AT, &c. In presence of me, Notary-public subscribing, and witnesses after mentioned, compeared personally *T*, messenger, procurator lawfully constituted by *A* and *B*, tutors-testamentary to *K*, for their interest, to the effect under written, by their letters of procuratory, of the date ; and like-

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\* If of lands adjudged, add,—“conform to the tenor of the acts of parliament made anent legal reversions, in all points.”

† When premonition is made to the wadsetter, annual-renter, or adjudger, at their dwelling-houses, the instrument must bear this order immediately after the close thereof, and before the Notary subjoin his doquet, and the witnesses subscribe, as follows.—“And in regard the said *T* could not be personally apprehended; therefore, I the said Notary-public subscribing, for his better certioration of the premises, affixed and left at and upon the most patent door or gate of his dwelling-house of an full, authentic, and exact copy of this present instrument, subscribed by me, bearing the witnesses above written, their names and designations therein inserted, and hereto subscribing.” It is likewise to be observed, that as all these kind of instruments, and generally, all instruments necessary in the redemption of heritable redeemable rights, are writs of importance; therefore, the Notary ought to subjoin thereto his long doquet.

wise, as messenger and sheriff in that part speciall constitute by his Highness's letters of supplement passed under the signet, to the effect under written of the date ; and the said *T*, having in his hands the foresaid letters of procuratory, and letters of supplement under the signet, together with the contract of wadset, containing therein the reversion after specified, passed to the personal presence of *C*, one of the two heirs-portioners served and returned to the deceased *D*; and also to the personal presence of *E*, daughter and heir to the deceased *F*, her mother, the other sister and heir-portioner of the said deceased *D*, procreate betwixt her and *G*, her husband; and also to the personal presence of the said *G*, for himself, and as tutor and administrator of law to the said *E*, his daughter; and in like manner to the personal presence of *H* and *J*, tutors and curators to the said *C*, for their interests; and after reading and publishing the writs above narrated, in presence of the several persons above named, made to them severally the intimation and premonition under written. Likeas, the day foresaid, the said *T*, at command of the foresaid letters under the signet, and procuratory, passed to the market-cross of , head burgh of the sheriffdom of , within which the said *C* and *E*, and the said tutors and curators above specified, presently dwell; and there, after the crying of three several oyesses, open proclamation, and public reading of the foresaid letters and procuratory, in his Highness's name and authority, and also for and in name and behalf of the said *K*, and her tutors, for their interest, made due and lawful intimation and premonition to them, and to all others the tutors and curators of the said *C* and *E*, if they any have, for their interest, to compare within St. Giles's kirk of Edinburgh, at that place thereof where the tomb of the deceased Earl of Moray is situate, the day of next to come, being Whitsunday even, in this instant year ;



and then, and there, the foresaid day, betwixt the sun-rising and down-passing thereof, to receive from the said *K*, and her tutors and curators foresaid, or their procurator in their names, the sum of

Scots money, and that for the lawful redemption, loosing, and outquitting from the said *C* and *E*, their heirs and assignees, and frae the said *G*, for himself, and for his own right and interest, of all and haill the lands, &c. and others mentioned in the foresaid letters and procuratory, lying, wadset by the deceased *M* to the also deceased *D*, his heirs and assignees, in manner, and under reversion, as is rehearsed in the foresaid contract, letters of procuratory, and letters under the signet; and to which lands and others foresaid the said *K*, and her tutors for their interest, have right in manner specified in the same letters under the signet, and procuratory foresaid; and also to hear and see the said *K*, and her tutors, for their interest, or their procurator in their names, observe, keep, and fulfil, to the said *C* and *E*, and the said *G*, for himself, and as tutor and administrator of law to the said *E*, his daughter, and likewise to the tutors and curators above named, and to all others the tutors and curators of the said *C* and *E*, if they any have, for their interest, the haill terms and conditions prestable by the said deceased *M* to the said deceased *D*, as contained in the said contract of wadset in all points, upon the granting of an lawful renunciation and grant of redemption to and in favour of the said *K*, her heirs and assignees, of the same lands and others above rehearsed; with certification, if they failzied, the said *K*, or her procurator, would consign the sum of money above mentioned, in terms of the reversion above specified. This the said messenger and procurator did, after the form and tenor of the said contract, letters of procuratory, and letters passed under the signet, in all points. Of the which letters passed under the signet, the said *T*, messenger, affixed and

left an just and authentic copy at the foresaid market-cross; and upon all and sundry the premises asked and took instruments, one or more, in the hands of me, Notary-public subscribing. These things were done betwixt the hours of                      and                      in the                      , day, month, year of God, and king's reign respectively above written, before these witnesses, viz. to the premonition of the persons above named, personally apprehended, as-said is, *L, O, P,* and *Q*; and to the foresaid premonition at the market-cross of                      , *R, S, T,* and *W*, specially called and required to the premises."

*Instrument of Premonition against one presently forth of the Kingdom.*

"AT, &c. The which day, in presence of me, Notary-public, and witnesses subscribing, compeared personally *A*, messenger, and sheriff in that part, having and holding in his hands our Sovereign Lord's letters of premonition, dated and signed                      raised at the instance of *B* against *C*, and passed, at command of the said letters, with me and the said witnesses, to the market-cross of Edinburgh, pier and shore of Leith, respectively and successively, and at each of these places, after the crying of three several oyesses, open proclamation, and public reading of the said letters, he, in his Majesty's name and authority, lawfully warned, premonished, and required the said *C*, because he is presently forth of the kingdom, upon sixty days warning, to compear within                      upon the                      day of                      next to come, in this instant year                      ; and there, betwixt sun-rising and down-going thereof that day, to receive from the said *B*, or his procurator in his name,\* all and hail the sum of                      pounds

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\* Or,—“                      ; and that for the lawful redemption, loosing, and outquitting from the said

sterling money ; and that for redemption of all and haill the lands, &c. disposed by the said *B* in favour of the said *C*, heritably, but under reversion, conform to the contract of wadset passed betwixt them, of date \_\_\_\_\_ and in which the said *C* was infeft by seisin following thereon, dated \_\_\_\_\_ and registrate \_\_\_\_\_ ; and to hear and see the said reversion obtempered and fulfilled in all points, after the form and tenor thereof, upon the granting of a valid renunciation, and delivering the same, and the said contract of wadset and seisin, to

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*C*, of all and haill the houses, tenements, &c. disposed by the said *B* to the said *C*, his son, his heirs and assignees, heritably, but under reversion, conform to his disposition, dated \_\_\_\_\_ ; and in which the said *C* is infeft, under reversion, as is testified by his seisin, dated \_\_\_\_\_, duly registrate ; and which houses, tenements, &c. lying as said is, were declared redeemable by the said *B* from the said *C*, and his foresaids, by payment making to him or them of the said \_\_\_\_\_, at any time in his own lifetime allenary ; and that upon granting an sufficient and lawful renunciation and grant of redemption, containing therein a procuratory of resignation, for resigning the said houses and tenements, &c. in the hands of the provost, or any of the bailies of the said burgh of \_\_\_\_\_, to be made, subscribed, and delivered by the said *C*, in favour of the said *B*, his father, his heirs and assignees whatsoever ; and to come and see the said houses, tenements, &c. lawfully redeemed, loosed, and outquitted, and the said reversion lawfully and duly satisfied, obtempered, and fulfilled by the said *B* to him, conform thereto in all points ; with certification to him, if he failzie, the said \_\_\_\_\_ shall be consigned in the hands of any responsal man, living within the said burgh of \_\_\_\_\_, to be forthcoming to the use of the said *C*, and his foresaids, for the redemption of the said houses, tenements, &c. Of the which letters the said *A*, messenger, affixed and left," &c. as above.

the said *B* : and made certification to the said *C*, as effects, and left and affixed a just and authentic copy of the said letters upon the said market-cross of Edinburgh, and another just and authentic copy of the same upon the said pier and shore of Leith. Upon the which, and all and sundry the premises," &c.

*Instrument of Consignation.*

" AT &c. compeared personally *A*, as procurator for in name and behalf of *B*, specially constitute, conform to the letters of procuratory granted to him thereanent, of the date \_\_\_\_\_, and passed with me, Notary-public and witnesses after specified, to the new session-house of Edinburgh, to that part thereof where the commissaries use to sit in judgment ; having and holding in his hands \* an contract of wadset, made and passed betwixt *B* and *C*, on the one

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\* Or,—“ an extract of a seisin under the hand of \_\_\_\_\_ Notary-public, of date \_\_\_\_\_, following upon an heritable bond, dated \_\_\_\_\_ ; by which the said *B* became bound to infeft the said *C*, his heirs, &c. in an annualrent of \_\_\_\_\_ payable forth of the lands of \_\_\_\_\_, and others therein mentioned, and by which the said annualrent is declared redeemable, in manner therein specified ; and that a copy of the bond, or extract of the seisin thereon, should be sufficient for using the order of redemption under written, as the said extract, signed by \_\_\_\_\_, keeper of the records of seisins for the shire of \_\_\_\_\_, in which the said seisin was registrate, bears.” Or,—“ an extract of a decret of adjudication obtained at the instance of the said *C* against the said *B*, before the Lords of Council and Session, of the date \_\_\_\_\_ ; whereby the said Lords adjudged, decerned, and declared the ground-right and property of all and hail,” &c. [*Here narrate the decret of adjudication, with the charter and infeftment following thereupon*].

and other parts, dated ; whereby (for he causes therein specified) the said *B* sold, annaillied, impignorated, and disposed to the said *C*, his heirs and successors, &c [*Here narrate the contract*], as the said contract of wadset more fully bears; and suchlike, having and holding in his hands the foresaid letters of procuratory, made and granted by the said *B* to the said *A*, authorizing and empowering him to make the premonition, and perform the rest of the order after specified, in manner under written; and suchlike, having and holding in his hands the said instrument of premonition, under the sign and subscription of Notary-public, of the

date , bearing, that the said *A*, as procurator for, and in name and behalf of the said *B*, duly and lawfully authorized for that effect, had made due and lawful intimation and premonition to the said *C*, to compare at the date hereof, within

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\* Or,—“ within the parish-church of , in the sheriffdom of , within which the said lands and others above adjudged do lie, upon this day, being the day of years, betwixt sun-rising and sun-setting; and then and there, to receive and accept from the said *B*, or his procurator in his name, the foresaid accumulate sum of money, and annual rents thereof, with the expenses of the infeftment, and composition to the superior; an account whereof the said *B*, procurator foresaid, did require from the said *C*, to the said the same; in case of his absence or refusal, might be assigned in manner after mentioned; and that for the lawful redemption, loosing, and outquitting from the said of all and haill the lands and others above adjudged, lying as said is; and also bearing, that the said *A*, procurator foresaid, had required the said *C* to bring along with him, the time and place foresaid, the decreet of adjudication above mentioned, with the abbreviate thereof, and bounds of the same, in favour of the said *B*, the time and place foresaid: with certification, if he failzied to compare, or, comparing, should refuse to grant the foresaid

the new session-house of Edinburgh, at that part thereof above mentioned; then and there, to receive from the *B*, or his procurator in his name, the foresaid sum of \_\_\_\_\_, and other sums due by the clause of reversion above specified; and to hear and see the haill other conditions prestable by the reverser fully performed: as the said procuratory, and instrument of premonition following thereupon, more fully bear. And which contract,\* containing the clause of reversion above mentioned, procuratory for making the said premonition, and performing the rest of the order under written, in manner after mentioned, and instrument of premonition following thereupon, of the dates, tenors, and contents above expressed, the said *A*, procurator foresaid, gave and delivered to me, the said Notary-public, to be read and published in presence of the witnesses under written. All which accordingly I did. After producing, exhibiting, and public reading of the which writs, particularly above mentioned, in presence of the said *A*, as procurator for, and in name and behalf of the said *B*,† did take out, number, and tell down, in current

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renunciation, and deliver up the same, with the writs above specified; then, and in either of these cases, the said *B*, or his procurator in his name, would consign the sums of money above written, in the terms of, and conform to the tenor of the acts of parliament made anent legal reversion, in all points."

\* Or,—“extract of the seisin above specified.” Or,—“extract of the decret of adjudication.”

† If he who hath the redeemable right in his person does not compear, then you must add,—“in regard the said *C* was absent, and failzied to compear this day and place, to the effect above mentioned, notwithstanding of the premonition above specified, did cause make public intimation to the said *C*, by calling him openly and publicly at the most patent door of \_\_\_\_\_, after the crying of three several oyesses, as use is, and thereafter,” &c.

money, having passage and course of payment,\* the said sums, upon payment or consignment whereof the lands and others above specified are redeemable, in manner particularly above mentioned; and required him, or any person in his name empowered by him, to accept thereof, and receive the same, and to deliver up to him, as procurator for, and in name of the said *B*, the foresaid contract of wadset,† and charters and infeftments following thereupon, with a sufficient renunciation and grant of redemption of the same, containing procuratory of resignation, and all clauses needful, to and in favour of the said *B*, his heirs and assignees, to be cancelled, destroyed, or kept, used, and disposed upon, by the said *B*, and his foresaids, as their own proper writs and evidents, in all time coming. And the said *C* ‡ having com-

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\* Or, if it be consigning of sums due by adjudication, say,—“the foresaid accumulate sum of \_\_\_\_\_, and annualrents thereof, from the date of the decret of adjudication to this day and date, with the sum of \_\_\_\_\_,”

*There ought to be consigned a sum exceeding the expenses of the infeftment and composition to superiors*]; “to the effect that out of the first end thereof the said *C* may have the sums truly expended, for the expenses of infeftment following upon the said decret of adjudication and composition to the superior, as the same shall be liquidated by the Lords of Council and Session, in the process of declarator of redemption to follow hereupon; and required the said *C* to accept thereof, and receive the same, and to deliver up to him,” &c.

† Or,—“heritable bond;” or,—“decret of adjudication,” &c.

‡ But if neither the person, nor any empowered by him, appear, add,—“nor no person in his name, authorized and empowered by him, having compeared to receive the said sum, and deliver up the particular writs above mentioned, with a sufficient renunciation and grant of redemption of the same, containing procuratory of resignation, and all other necessary clauses; therefore,” &c.

peared, the time and place foresaid, did offer to accept and receive the foresaid sum, and to deliver up the writs particularly above expressed; \* but having offered no <sup>d</sup>renunciation and grant of redemption, at least no formal one, containing procuratory of resignation, and other usual and necessary clauses; therefore, the said *A*, as procurator for, and in name and behalf of the said *B*, having waited and attended till sun-setting said day, at the place of redemption above written, did consign the foresaid sum of

money † in the hands of \_\_\_\_\_, then and there present; who, accordingly, received the same, to be forthcoming for the use, and to the utility and behoof of the said *C*; and protested, that the lands and others above written ‡ were, and might be holden and repute, loosed and outquitted, from the said *C*, and his foresaids, by the said *B*, his constituent, in the terms of, and conform to the tenor of the § reversion above specified, in all points; and that the said *B* may have full regress, ingress, and access, in and to the lands and others above written;

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\* Or if it be consigning sums due by adjudication, say,—“but the account of expenses of the infestment, and composition to the superior, being very extravagant, and not instructed; besides, that he offered no renunciation and grant of redemption, at least no formal one containing the usual and necessary clauses; therefore,” &c.

† And add here,—“and annualrents thereof from the date of the decret of adjudication to this day and date, together with the sum of \_\_\_\_\_ money foresaid, to the end the said *C* might be paid expenses, as the same should be modified by the Lords of Session in the declarator after mentioned.”

‡ Or, if it is an infestment of annualrent, say,—“that the annualrent, or yearly duty above written, and lands, &c. out of which the same is upliftable.”

§ Or, if it be consigning sums due by adjudication, add,—“laws and acts of parliament made anent legal reversiones in all points.”



and the said *C* excluded and debarred therefrom in all time coming : and further protested, that the said *C* might be liable to his constituent in the expenses of a process of declarator of redemption to follow hereupon, and of all other cost, skaith, damages, and expenses the said *B* should sustain, suffer, and incur through and by the said *G*, his not receiving of the sums of money above written, consigned through his default as said is, and not delivering up the \* wadset-right and others above written, with a sufficient renunciation and grant of redemption of the same, containing all clauses needful, in the terms, and after the form and tenor of the † reversion, procuratory, and instrument of premonition above written, for making the consignation above specified, in all points. Whereupon, and all and sundry," &c.

*Instrument of Requisition.*

" AT, &c. in presence of me Notary-public, and witnesses subscribing, compeared personally *A*, as procurator for, and in name and behalf of *B*, specially constituted, authorized, and empowered to the effect after mentioned, conform to the letters of procuratory granted to him thereanent, of the date \_\_\_\_\_ ; and passed with me Notary-public, and witnesses after specified, to the personal presence of *G*, ‡ reverser of the lands [*or* yearly annualrent] under written ; having and holding in his hands a contract of

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\* Or,—“ heritable bond ;” or,—“ decret of adjudication.”

† Or,—“ acts of parliament anent legal reversions, in all points.”

‡ Or,—“ to \_\_\_\_\_, the mansion-house of *C*, lying in the sheriffdom of \_\_\_\_\_ and parish of \_\_\_\_\_, at which place the said *C* and his family presently reside,” if the reverser was premonished at his dwelling-house.

wadset [*or heritable bond*], &c. [*Here narrate the dispositive clause in the wadset, or obligation to infest in the heritable bond, and clauses of reversion and requisition; then add*], as the same bears. Which contract of wadset, [*or heritable bond*], together with the procuratory above expressed, empowering the said *A* to make the requisition after mentioned, and follow forth the rest of the order in manner under written, he gave and delivered to me, the said Notary-public, to be read and published in presence of the witnesses under written; which accordingly I did: and after the producing and public reading of the writs above mentioned, the said *A*, as procurator foresaid, in presence of me, the said Notary-public, and witnesses after specified, did duly and lawfully premonish and require the said *C* \* to compear within, &c. [*Here name the place of redemption*], upon the term of next to come, betwixt sun-rising and down-passing thereof; and then and there to deliver to the said *B*, or his procurator in his name, the foresaid sum of       † under the penalty above mentioned; and, upon payment, to accept and receive from the said *B*, or his procurator in his name, a valid and sufficient renunciation and grant of redemp-

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\* Requisition, as well as premonition, must be made to the tutors and curators of the reverser, if he be a minor, either by requiring them personally, or by letters of supplement, at the market-cross of the head burgh of the shire, where the minor resides; or if the reverser hath no certain place of abode, or is forth of Scotland, he must be cited at the market-cross of Edinburgh, pier and shore of Leith, by letters of requisition under the signet;—in both which cases the instrument of requisition may be framed from those of premonition in the like cases mentioned above, so that it was thought needless here to repeat them.

† Or, if it be infestment of annualrent, add,—“and bygone annualrents thereof resting preceding the said term.”

on of the premises, together with the said contract of wadset, charters, and infeftments following thereupon, in favour of the said *B*, and his foresaids, to be used and disposed upon by the said *C*, as his own proper writs and evidents in all time coming; and that for the lawful redemption, loosing, and out-putting of the lands and others above mentioned, from him and his foresaids, *in perpetuum*. Whereupon, and all and sundry the premises," &c.

*Instrument of Attendance.*

"AT, &c. compeared personally *A*, as procurator for, and in name and behalf of *B*, specially constituted, authorized, and empowered by him, to the effect after mentioned, conform to the letters of procuratory granted to him thereanent, of the date \_\_\_\_\_; and passed with me the said Notary-public, and witnesses after specified, to the new session-house of Edinburgh, to that place thereof where the commissaries usually sit in judgment; having and adding in his hands a contract of wadset, [or heritable bond], &c. [*Here narrate the dispositive clause of the wadset, with the clauses of redemption and requisition; and then add*], and suchlike, having and holding in his hands the foresaid letters of procuratory, made and granted by the said *B* to the said *A*, authorizing and empowering him to make the requisition after mentioned, and perform the rest of the order in manner under written, and farther, having and holding in his hands an instrument of requisition, under the sign and subscription of \_\_\_\_\_ Notary-public, of the date \_\_\_\_\_, bearing, that the said *A*, as procurator for, and in name and behalf of the said *B*, specially authorized for that effect by the procuratory above mentioned, did duly and lawfully admonish and require the said *C* to compear, at the time of redemption above specified, upon this day,

being                   , this instant year of God one thousand eight hundred and ten, betwixt the sun-rising and down-passing thereof; and then and there to pay and deliver to the said *B*, or his procurator in his name, duly and lawfully authorized and empowered for that effect, the foresaid sum of                   , under the penalty above written; and, upon payment to accept and receive up from the said *B*, or his procurator in his name, a valid and sufficient renunciation, discharge, and grant of redemption of the premises, together with the said contract of wadset charters and infeftments following thereupon, in favour of the said *B*, and his foresaids, to be used and disposed upon by the said *C*, as his own proper writ and evidents in all time coming; and that for the lawful redemption, loosing, and outquitting of the same from the said *B*, and his foresaids, *in perpetuum* and in case of his absence or refusal, protested, that he might be liable for the sum of                   , of liquidate expenses, by and attour the principal sum above mentioned; and further, for all cost, skaith, damage and expenses he might happen to sustain or incur through the not payment of the said sum, in terms of the clause of requisition above mentioned, in all points; as the said instrument more fully bears. Which contract of wadset, [*or heritable bond*], with the foresaid procuratory for making the said requisition, &c. and instrument of requisition following thereupon above specified, of the dates, tenors, and contents above expressed, the said *A*, procurator foresaid, gave and delivered to me the said Notary-public, to be read and published in presence of the witnesses under written; all which accordingly I did. After producing, exhibiting, and public reading of which writs particularly above mentioned, in presence of the said witnesses and others present, the said *A*, as procurator for, and in name and behalf of the said *B*, after having waited and attended at the place foresaid this day from sun-rising until after

un-setting, declared he was ready and willing to re-  
give the sums of money above written, and give up  
and deliver the said contract of wadset, [or heritable  
bond], with a sufficient renunciation, discharge, and  
grant of redemption of the same. All which he did  
exhibit, show, and produce, in presence of me the  
said Notary-public and witnesses; and in regard the  
said C, nor no other person in his name, compeared  
to the effect above mentioned, notwithstanding he  
the said C was openly and publicly called at the most  
patent door of \_\_\_\_\_, (the place of requisition),  
after the crying of three several voyesses, as use is;  
therefore, the said A, procurator foresaid, protested,  
that the said C might be liable to the said B, his  
constituent, in the said sum of \_\_\_\_\_ money fore-  
said of liquidate expenses, incurred through failzie  
in his not payment of the principal sum above men-  
tioned, requisition being duly made to him for that  
effect, in manner above expressed; and further, that  
he may be liable to the said B for all cost, skaith,  
damage, and expenses he shall happen to sustain or  
incur through the not payment of the principal sum  
above expressed; and that it may be leisome and  
lawful for his said constituent to use all manner of  
execution and diligence, both personal and real, a-  
gainst the said C, for the sums above mentioned,  
the one but prejudice of the other. Whereupon,  
&c. These things were done within \_\_\_\_\_, be-  
twixt the hours of \_\_\_\_\_ and \_\_\_\_\_,  
before and in presence of," &c.

## TITLE VIII.

## OF PROCURATORIES.

MY business in this title is not to inquire nicely into the several powers given to procurators, or what they are liable in if they do not perform in the express words of their procuratory or mandate ; but only to set down some of the ordinary and most useful procuratories in particular cases, whereby a Notary-public may be enabled, from these examples, to form and draw up any other kind of procuratory whatever, according as the different business requires, and as his own good judgment shall direct.

Whoever reads Stair or Mackenzie's *Institutions*, will find a procurator or mandatary defined to be, *one who is employed to do or manage any business gratuitously*; and that most mandates are free, and may be refused, though precepts may not, when the party upon whom they are drawn hath power from the drawer ; and that mandataries are liable for exact diligence, *ex culpa levissima*, because, although the mandate be only *gratia mandantis*, yet the very nature of it implies diligence ; but by the nature of the contract, mandataries, seeing their undertakings are gratuitous, ought only to be liable for such diligence as they use in their own affairs, and the mandatary ought to impute it to himself that he made not choice of a more diligent person ; which our custom followeth : but still there must be *bona fides*.

By our practice, formerly extended, procuratories are requisite to authorize the Notary's deed in making resignation, premonition, and consignation, and requisition and attendance ; as has been seen in the preceding titles treating of these instruments.

Procuratories of resignation *in favorem*, are ordinarily adjoined to dispositions, and run thus.—“ And for effectuating the foresaid infeftment by resignation, I, by these presents, make and constitute *A* and *B*, and each of them, conjunctly and severally, my very lawful and irrevocable procurators, for me, and in my name, to resign, surrender, overgive, and deliver; likeas I, by these presents, resign, surrender, overgive, and deliver, all and haill, [*Here the lands are repeated; then say*], lying as said is, together with all right, title, interest, claim of right, property, and possession, petitory and possessory, that I, my heirs and successors, had, have, or anywise may claim or pretend thereto, or to any part thereof, in time coming, in the hands of my immediate superior or superiors of the same, presently being, or that shall happen to be for the time, or of his or their commissioners having power to receive resignations in his or their names, in favour and for new infeftment of the same, to be made and granted to the said *C*, his heirs or assignees whatsoever, heritably and irredeemably, as said is; and thereupon acts, instruments, and documents needful to ask, lift, and raise, and generally all and sundry other things concerning the premises to do, use, and exercise, which to the office of procuratory in such cases by the law and custom of Scotland is known to appertain, and which I might do myself if I were personally present; promising to hold firm and stable all and whatsoever things my said procurators, or any of them, in the premises, lawfully doe, or causes to be done, without revocation.”

When an apparent heir who is not infeft, disposes his lands, there is adjoined to the disposition a procuratory for serving the disponent heir to his predecessor, and for resigning, thus.—“ And because I am not yet infeft and seized as heir to the said deceased *A*, my father, in the lands, barony, and others above disposed; therefore, I, by these presents, make and

constitute *B* and *D*, and each of them, conjunctly and severally, my procurators, for me and in my name, to purchase and procure briefes forth of our Sovereign Lord's Chancery, for procuring me to be duly and lawfully served and retoured nearest and lawful heir-male to the said deceased *A*, my father, in the lands, baronies, &c. above disposed, or to any other of my predecessors who died last vested and seized therein; and to raise, and to cause proclaim the briefes for that purpose, and to expedite the service, and to compear for me thereat, and to return the same to the Chancery, and to take instruments, and to do all other things requisite concerning the serving me heir in special and heir in general to the said deceased *A*, my father, or others my predecessors, which I could do myself if I were personally present; and afterward to procure me infest therein, by raising precepts upon the said service; and to cause register my seisin: and I being so infest and seized, with power to my said procurators, conjunctly and severally, as said is, now as then, and then as now, to resign, &c. likeas I, if I were already infest in all of them, and then as now, resign," &c.

When the disposition of the lands is to the superior, the procuratory of resignation contained therein is *ad remanentiam*, thus.—“To resign, &c. in the hands, and in favour of the said *A*, and his foresaids, *ad perpetuam remanentiam*, to the effect that my right of property being consolidated in his person with his own right of superiority of the same, all and hail the lands, &c. and others above expressed, so holden, may remain and abide with him and his foresaids, heritably and irredeemably, perpetually in all time coming: and thereupon acts,” &c.

But it sometimes happens that these procuratories are omitted in the disposition; in which case procuratories *per se* (as they are called) are granted, of the following tenor.—



*Procuratory of Resignation of Lands by one in the King's Hands, in Favour of Himself and his Heirs, with a Reservation of his Lady's Liferent; with some Variations.*

“ BE it known to all men by these present letters, me *A* of \_\_\_\_\_, heritable proprietor of the lands and others under written, for the care and regard that the same lands and others after specified may remain with my own posterity, and that the heritors thereof may continue in the surname of *A*, and for other good causes and considerations moving me, to have made and constitute; likeas I, by these presents, make, constitute, and ordain \_\_\_\_\_, and each of them, conjunctly and severally, my very lawful and irrevocable procurators, for me, and in my name, and upon my behalf, to compear at whatsom-ever place, day, or time lawful, and there, by deliverance of staff and baston, as use is, with all condign reverence and due humility, as becometh, to resign, surrender, overgive, and deliver; likeas I, for me, my heirs and successors, resign, &c. \* all and hail, [*Here insert the lands*], together with all right, title, interest, claim of right, property, and possession, petitory and possessory, which I, my heirs or assignees, had, have, or anywise may claim or pretend thereto, or to any part thereof, in the hands of our Sovereign Lord the King's Majesty, or his successors, my immediate lawful superiors thereof, or his or their commissioners, having power to receive resignations in his or their names, in favour and for new infest-

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\* If there be any provisions or restrictions, you may add,—“ with and under the express provisions and conditions after specified.”

ment thereof, \* to be made and granted to me, and the heirs-male lawfully procreate, or to be lawfully procreate, of my body, and the heirs whatsoever law-

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\* If the procuratory be granted for new infeftment to be given the son, reserving the father's liferent, it will run thus.—“ To be made and granted to myself in liferent, and after my decease to *G*, my eldest lawful son procreate betwixt me and the deceased *D*, my spouse, and the heirs lawfully to be procreate of his body, in fee ; which failing, to return to me, my heirs-male lawfully to be procreate of my body in any subsequent marriage ; which all failing, to my heirs or assignees whatsoever ; with and under the express conditions and provisions after specified, to be contained in said infeftment in manner under written : providing always, likeas it is hereby expressly provided and declared, that the foresaid infeftment to be granted to the said *G*, my son, is and shall be in full contentation and satisfaction to him of all former provisions, bonds, obligations, and others whatsoever, that he or his heirs and executors may anywise ask, claim, or crave of me, by virtue of the contract of marriage made and passed betwixt me and the said deceased *D*, my spouse, on the one and other parts, or any other manner of way whatsoever, (except my own good will allenarly) ; and farther, it is provided and declared, that in case it shall happen the said *G* to depart this life without heirs of his own body, and that thereby the foresaid lands return to my other heirs-male to be procreate by me with any other lawful spouse ; in that case, the said heirs-male or female shall be holden and obliged to content and pay to

my daughters of the said first marriage, their heirs, executors, or assignees, the sum of \_\_\_\_\_, equally to be divided amongst them ; and in case any of my said daughters shall decease before marriage or majority, then the part of the daughter so deceasing shall accresce and belong to the daughter or daughters surviving, equally and proportionally among them ; which sum of \_\_\_\_\_ is and shall be in full contentation and satisfaction to them of all they can ask, claim, or crave by the decease of the said *G* : with the which provisions and conditions above written

fully to be procreate of their body; whom failing, to the heirs-female lawfully procreate or to be procreated of my body, and the heirs of their bodies; the eldest heir-female being always obliged to marry a gentleman of the surname of *A*, or of any other surname, who, and the heirs to be procreate betwixt them, shall successively and perpetually, in all time thereafter, be obliged to take upon them, use, and carry the surname and arms of *A*; wherein if they fail, they shall omit and tyne all benefit of the lands, barony, and others above mentioned, both principal and warrandice, and the same shall accresce and pertain to my next apparent heir or heirs of tailzie, who shall have right to the lands and others above specified, suchlike as if the party failing had never been infest therein, nor had had right thereto; and shall have power to pursue actions of reduction, declarators of adjudication, and all other actions necessary for establishing their rights of the lands and others above written in their person upon the said contravention; and failing of heirs-female lawfully to be procreate of my own body, then to any other person or persons that I have already, or shall now or at any time hereafter nominate, design, and appoint my heir or heirs of tailzie, by a writ under my hand, to succeed to the lands and barony, and others above rehearsed, and under such provisions, restrictions, and qualifications as shall be contained therein; which the persons so to be nominate shall be holden to perform and fulfil; and failing of such a nomination, or the same being made, and thereafter revoked or cancelled by me, (which shall always be in my power during my lifetime), then to my nearest heirs or assignees whatsoever, heritably and irredeemably, in due and compe-

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these presents are granted by me, and accepted of by my said son, and his foresaids, and no other ways. Acts, instruments," &c.

tent form: providing always that the said heirs, as well male as female of my own body as the heirs to be contained in the same nomination, shall be obliged and liable; likeas, by the acceptation of these presents, and infeftment to follow hereupon, they oblige themselves to perform and fulfil the hails provisions, qualifications, restrictions, and reservations mentioned in a bond of provision granted by me, of the date

, and relative hereunto; and for fulfilling whereof this present procuratory is granted: reserving always to *B*, my spouse, her liferent-right of the foresaid lands, and that in lieu and place, and in full contentation and satisfaction to her, of all whereunto she is provided by her contract of marriage, as is expressly provided in the disposition of the said lands and barony made by to me, and charter following thereon; which contract of marriage, the said *B*, my spouse, by acceptation of the liferent and infeftment foresaid, hereby reserved to her, doth *simpliciter* and absolutely discharge: and upon the said resignation, acts, instruments, and documents, one or more needful, to take, ask, lift, and raise, and generally all other things necessary thereanent to do, which I might do myself if I was personally present; promising to hold firm and stable all and whatsoever things that my said procurators, or any of them, in the premises, lawfully do, but revocation. Registration," &c.

*Procuratory for serving one Heir to his Father on a Paper apart.*

"BE it known to all men by these presents, me, *A* now of *B*, eldest lawful son and apparent heir to the deceased *C* of *B*, to have constitute and ordained; likeas I, by the tenor hereof, make, constitute, and ordain *D* and *E*, and each of them, conjunctly and severally, my very lawful and irrevocable procurators,

and special errand-bearers, to the effect under written; giving, granting, and committing to them, and each of them, conjunctly and severally, as said is, my very full, free, and irrevocable power, express bidding, mandate, and charge, for me, and in my name, to raise brieves forth of our Sovereign Lord's Chancery, directed to the four ordinary macers before the Lords of Council and Session, and to the sheriffs and bailies *respectivè* of the sherriffdom of *L*, and regality of *M*, specially constitute by our Sovereign Lord's commission, to the effect after specified, for obtaining me served and retoured nearest and lawful heir general and special to the said deceased *C*, my father, in all lands, heritages, heritable offices, annualrents, and others wherein he died last vest and seized as of fee; and to cause proclaim the said brieves, and me to be served and retoured heir foresaid; and to retour my service to the Chancery, and to obtain precepts upon my said service, for purchasing and obtaining me infest in the lands and others foresaid, and to cause put the said precepts to due execution, in all points; and generally all and sundry other things to do, use, and exerce thereanent, suchlike, and as freely, as I might do myself if I were personally present, or that to the office of procuratory in such cases is known to appertain; promising to hold firm and stable all and whatsoever things that my said procurators, or any of them, lawfully do, or cause be done, but revocation. Registration for preservation," &c.

*Procuratory of Premonition and Consignation.*

"BE it known to all men by these presents, me *A*,"

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\* If the reverser be minor, the procuratory must be made with consent of his curators; in which case say,—  
 "with the special advice and consent of my curators, for their interest." At if the reverser be under

heritable proprietor of the lands and others under written, and having undoubted right to the reversion thereof in manner after mentioned : Forasmuch as,\*

pupillarity, the tutor acts alone ; and if he be nominated by the father, say,—“ *C*, tutor nominate to *A* by the deceased *D*, his father, conform to his letters of nomination, dated .” But if he be a tutor of law, say,—“ *C*, tutor of law served and retoured to *A*, conform to my retoured service, dated .” And if he be a tutor-dative, say,—“ *C*, tutor-dative to *A*, conform to my letter of tutory under the quarter-seal dated ;” and repeat the tutor’s name in its proper places.

\* If the procuratory be to premonish an annualrenter to receive his money due by heritable bond, say,—“ I, by my heritable bond dated (for the causes therein specified), bound and obliged me, with all convenient diligence, and upon my own proper charges and expenses, to duly, validly, and lawfully infest, vest, and seize *D*, his heirs and assignees whatsoever, heritably, and under reversion, always in manner after specified, in all and hail an yearly annualrent of pounds sterling money, or in such an annualrent as should be due for; or agreeable and correspondent to the principal sum of pounds sterling money, by the laws and acts of parliament of this kingdom for the time, yearly to be uplifted and taken at two terms in the year, Candlemas and Lammas, by equal portions, forth of all and hail my lands of , [*Here take in the lands*], lying within the parochin of , and sheriffdom of , or forth of any other lands and heritages pertaining to me, wherever the same lie within this kingdom, or forth of any part or portion thereof, first, best, and readiest maills, farms, profits, and duties of the same ; redeemable always the foresaid annualrent, [*Here take in the reversion verbatim, as in the heritable bond.* But if the procuratory be to premonish an adjudger to receive his money due by adjudication, say],—  
 † upon the day of years, *O* obtained decret and sentence of adjudication at his instance against me before the Lords of Council and Session, adjudging, decerning, and declaring the ground-right and property of all and hail [*Here take in the lands adjudged*], to pertain and

by contract of wadset, made, passed, and perfected betwixt me and *L*, on the one and other parts, of the date the            of            years, I (for the causes therein specified) sold, annailzied, wadset, impignored, and disposed, from me, my heirs, and all others my assignees, to and in favour of the said *L*, his heirs and assignees whatsoever, heritably, with and under the provision and condition of reversion after mentioned, all and hail, &c. [*Here take in the lands as in the dispositive clause of the wadset-right*], \*, redeemable always the lands and others above expressed, by me, my heirs, successors, or assignees, from the said *L*, his heirs and successors in the wadset-lands, and others above rehearsed, by payment making to them, &c. [*Here take in the tenor of the reversion verbatim as in the contract; and then add*], as the said con-

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belong to him heritably, (under reversion, conform to act of parliament), for payment and satisfaction to him of the sums of money, principal, annualrents, and liquidate expenses therein contained, extending in hail, at the date of the said decret of adjudication, to the sum of

pounds sterling money, *salvo juxta calculo*, and of the annualrent of the said accumulate sum from the date of the said decret of adjudication during the not redemption; and also, in payment and satisfaction to him of the expenses of the infestment to follow thereupon, and composition to the superior of the said lands for his entry thereto; as the said decret of adjudication, of the date foresaid, with the abbreviate thereof, duly recorded conform to act of parliament, more fully bears: conform to which decret, and charter following thereupon from the said superior, the said *O* was, upon the            day of            years, duly infest and seized in the lands and others above written, as the said decret of adjudication, charter and seisin, more fully purport."

\* But if the reversion be in a paper apart, you must here narrate it, and thereafter say,—“ as the said contract of wadset, [*or heritable bond*] and letter of reversion, in themselves more fully purport."

tract of wadset at more length bears. By virtue of which contract of wadset, and precept of seisin therein contained, the said *L* was duly infeft and seized in the lands and others above written; as his seisin, dated the       day of       years, duly registrate conform to the act of parliament, more fully bears. \* And now seeing that I am ready, willing, and de-

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\* If the procuratory be to premonish an annualrenter to receive money due by heritable bond, say,—“ And seeing that I am ready, willing, and desirous the foresaid yearly annualrent be redeemed from the said *D*, and to make payment, &c. *mutatis mutandis*.”

Others frame these procuratories of premonition in a shorter form, thus,—

“ BE it known to all men, me       , heritable proprietor of the lands and others under written, and having right to the reversion after mentioned, [*leaving out the above narrative*], to have made and constitute       and       , and each of them, conjunctly and severally, my procurators, for me, and in my name, to pass, and, in presence of a Notary and witnesses, to premonish       personally, or at his dwelling-place, to attend on Whitsunday next, betwixt noon and sun-set, at       (the place of redemption), there to receive from me, or my procurators in my name, upon granting a valid renunciation and grant of redemption of the subjects after mentioned, sums of       sterling; and that for the lawful redemption, loosing, and outquiting from the said       , of all and haill my lands of       [*Here insert the lands*]; which lands and others above written, with the pertinents, were disposed by me to the said       , by contract of wadset betwixt us, of the date       ; in which contract it is provided, that the said lands and others above mentioned shall be redeemable by me upon payment of the sums of money, in the manner, and upon the premonition therein expressed; and to hear and see I am ready to perform the haill other articles incumbent upon me by the said contract of wadset. And further, I hereby grant full power to my said procurators, or any of them, to appear at the time and place above



sirous to redeem the said lands and others above written, from the said *L*, and to make payment to him of the sums of money above written, in terms of the reversion above expressed; therefore, wit ye me the said *A*, to have made and constitute, likeas *I*, by these presents, make, constitute, and ordain *Q* and *R*, and each of them, conjunctly and severally, as said is, my very lawful and irrevocable procurators; giving, granting, and committing to them my full, free, plain power, express bidding, mandate, and charge, for me, and in my name, and upon my account and behalf, to pass to the personal presence or dwelling-house of the said *L*; and there, in presence of a Notary and witnesses, as effeirs, to make due and lawful intimation and premonition to the said *L*, to compear within,† &c. [*Here insert the par-*

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written; and there to deliver, or offer-to deliver, to the said , the foresaid sums of , on his granting the renunciation above mentioned; and in case of absence, or refusal to receive the sums of money, and grant the renunciation above written, and deliver up the foresaid contract, to consign the said sums in the hands of , and protest, that the haill lands, and others above mentioned, may be held as lawfully redeemed from him, his heirs and successors, in terms of the reversion above mentioned; and thereupon to take instruments, and to do every thing else that to the office of a procurator in such cases is known to appertain, or that I might do myself if I were personally present. And I consent to the registration hereof," &c.

\* And if the reverser be minor, add,—“with advice and consent of my curators above named, for their interest.”

† If it be a procuratory to premonish an adjudger to receive money due by adjudication, add,—“the parish-church of , within which the said lands and others adjudged lie, upon the day of next come, betwixt and the same day; and then and there to accept and receive from me the said

*ticular place of redemption*], at the term of Whitsunday next to come, in this instant year of God one thousand eight hundred and ten, betwixt sun-rising and down-passing thereof the same day, to receive and accept from me the said *A*, or my procurators in my name, upon delivery of a valid renunciation and grant of redemption, the foresaid sum of money; and that for the lawful redemption, loosing, and outquitting from the said *L*, all and hail the lands and others above written, lying as said is; and also to hear and see me the said *A*, or my procurators in my name, observe, fulfil, and implement to the said *L*, and his foresaids, the reversion above mentioned, in the hail points and articles thereof; and in like manner to compear within, &c.\* [*Here insert the place of redemption*], at the said term of Whitsunday next to come; and there, the same day, betwixt the sun-rising and down-lapsing thereof, to really offer and deliver to the said *L*, or his procurator in his name, having his power for that effect, the foresaid sum of \_\_\_\_\_, upon his giving, granting, and delivering a sufficient letter of renunciation and grant of redemption, containing a procuratory of resignation for resigning the same in my hands; and that for the real redemption, loosing, and outquitting of the said lands and others above rehearsed; and in

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*A*, or my procurators in my name, the foresaid sum of \_\_\_\_\_ pounds Scots money foresaid, and other sums due by the aforesaid decree of adjudication; an account whereof you are hereby required and specially enjoined to require from the said *O*, to the end the same, in case of his absence or refusal, may be consigned in manner after mentioned; and that for the lawful redemption, loosing, and outquitting from the said *O*, all and hail the lands and others above written."

\* But if the procuratory be to premonish an adjudger, say,—“ within the said parish-church of \_\_\_\_\_, upon the said \_\_\_\_\_ day of \_\_\_\_\_ next to come.”

case of the said *L* his absence, or refusal to receive the said sum, and grant the renunciation and grant of redemption aforesaid, containing the procuratory above specified, and deliver up the said \* contract of wadset, and charter and infeftment following thereupon, then and there to consign the same in the hands of \_\_\_\_\_, and to protest, that the lands and others foresaid shall from thenceforth, and in all time thereafter, he habite, repute, holden, and esteemed lawfully redeemed, loosed, and outquit from the said *L*, and his foresaids, conform † to the reversion above written; and that he shall be holden and obliged to fulfil the same to me the said *A*, after the form and tenor thereof in all points; acts, instruments, and documents needful anent the haill premises to ask, raise, lift, and take, and generally all other things needful thereanent to do, use, and exerce, that to the office of procuratory, in such cases, by the laws and customs of this realm, is known to appertain and belong, in like manner, and as freely in all respects as I might do myself if I were personally present: all which I shall hold firm and stable, but revocation. And for the more security, registration for preservation," &c.

*Procuratory of Requisition.*

"Be it known to all men by these presents, me *A*: Forasmuch as, ‡ by contract of wadset, made, passed,

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\* And if to premonish an adjudger, add,—“decreet of adjudication, and abbreviate thereof above written, with the grounds and warrants thereof.”

† And if it be an adjudication, add here,—“conform to the acts of parliament anent legal reversions in all points.”

‡ But if the procuratory be requiring a sum due by heritable bond, in that case the bond is narrated thus.—

and perfected betwixt *B* and me, on the one and other parts, of the date \_\_\_\_\_, the said *B* (for the causes therein specified) sold, annailzied, wadset, impignorated, and disponed, from him, his heirs, and all others his assignees, to and in favour of me the said *A*, my heirs and assignees whatsoever, heritably, with and under the provision and condition of reversion after mentioned, all and haill, &c. [*Here take in the lands as in the dispositive clause of the contract of wadset,*] redcemable always the lands and others above expressed, by the said *B*, and his fore-saids, from me the said *A*, my heirs and successors in the wadset-lands and others above expressed, by payment making to me of the sum of \_\_\_\_\_ [*Take in here the tenor of the reversion verbatim as in the contract; then add*], likeas the said *B*, by particular obligation contained in the said contract of wadset,

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“ Forasmuch as *B*, by his heritable bond, subscribed by him of the date \_\_\_\_\_, (for the causes therein specified), bound and obliged him, his heirs and successors, duly and lawfully to have infeft, vest, and seized me, my heirs and assignees whatsoever, by charter and seisin, in due and competent form, heritably, under reversion, in manner after specified, in all and haill an annualrent of \_\_\_\_\_ pounds sterling, or such an annualrent as shall effeir and correspond to the principal sum of \_\_\_\_\_ pounds, by any supervenient law for the time, yearly to be uplifted and taken, at two terms in the year, Candlemas and Lammas, by equal portions, forth of all and haill, &c. [*Here insert the lands as in the heritable bond*], lying within the parish of \_\_\_\_\_; and sheriffdom of \_\_\_\_\_, or forth of any part or portion thereof, first, best, and readiest maills, farms, profits, and duties of the same; and that by two several infeftments and manners of holding; redcemable always and under reversion the said yearly annualrent by the said *B*, &c. [*as in the bond*], as the said heritable bond, of the date foresaid, in itself more fully contains.”

\* in case I or my foresaids should happen rather to desire to have the foresaid sum of                      repaid, than to retain the wadset-right † above written, then and in that case the said *B* bound and obliged him, his heirs and successors whatsoever, thankfully to content, pay, and again deliver to me the said *A*, my heirs or assignees whatsoever, all and hail the foresaid sum of                      , within, &c. [*Here insert the place of payment as specified in the contract*], at the term of Whitsunday one thousand eight hundred and ten years, to the which term all requisition for the said principal sum was thereby suspended, or at any other term of Whitsunday's even thereafter, I or my foresaids should please to have the same, upon requisition of forty days of before to be made by me and my foresaids, or our lawful procurators in our name, to the said *B*, and his foresaids, for that effect personally, or at their dwelling-places at the time, in presence of a Notary and witnesses, as effairs; and in case of failzie after requisition, the said *B* thereby bound and obliged him, and his foresaids, to make payment to me and my foresaids of the sum of

sterling of liquidate expenses, by and attour the principal sum; but prejudice to me and my foresaids of our real right of the lands and others foresaid, ay and while we be completely satisfied and paid of the sums of money above written; I always, and my foresaids, upon the receipt of the same, and full and complete payment thereof, granting the ‡ lands and others foresaid, to be lawfully redeemed, loosed, and outquit from me and my foresaids, by the said *B*; and renouncing and discharging the said

\* If it be requiring a sum due by heritable bond, insert the words *heritable bond* here, and where it occurs.

† And insert here *right of annualrent*.

‡ If it be requiring money due by heritable bond, say, —“foresaid right of annualrent.”



ing thereof; and then and there to pay and deliver to me, or my procurators in my name authorized for that effect, the foresaid sum of \_\_\_\_\_ sterling,\* under the penalty above mentioned; and upon payment to accept from me, or my procurators in my name, a valid and sufficient renunciation, discharge, and grant of redemption of the premises, together with the said † contract of wadset, infeftments, and haill writs and evidents of the wadset-lands and others above mentioned, in favour of the said *B*, and as foresaids, to be used and disposed upon by them as their own writs and evidents in all time coming; and that for the lawful redemption, loosing, and out-putting of the same, from me and my foresaids, *in perpetuum*; and, in like manner, to compare within, &c. upon the said Whitsunday next to come, betwixt sun-rising and down-lapsing thereof the same day; and then and there, for me, and in my name, and upon my account and behalf, to accept and receive from the said *B*, or any person empowered by him, the foresaid sum of \_\_\_\_\_, and upon satisfaction and payment to deliver up to the said *B*, or his procurator above named, a valid and sufficient renunciation, discharge, and grant of redemption of the foresaid † wadset-right, together with the foresaid contract of wadset, infeftments, and haill writs and evidents of the said wadset-lands, to be used and disposed upon by him, and his foresaids, as their own writs and evidents, in all time coming; and in case

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\* If it be an improper wadset, or an heritable bond, say, "and bygone annualrents thereof resting preceding the said term."

† Or,—“heritable bond, charter, and seisin following thereupon.”

‡ Or,—“right of annualrent, together with the foresaid heritable bond, charter, and infeftment following thereon.”

of the said *B* his absence or refusal, to protest, that he may be liable in payment to me of the said sum of of liquidate expenses, by and attour the principal sum above mentioned, and for all cost, skaith, damages, and expenses I shall happen to sustain or incur through the not payment of the said sum, in the terms of the clause of requisition above specified : acts, instruments, and documents," &c.

*Procuratory by a Creditor to require a Sum due by a Moveable Bond bearing a Previous Requisition.*

"BE it known, &c. me *A*, forasmuch as *B*, by his bond, [*Here narrate the bond, as also the haill clauses therein specified relative to the clause of requisition*], as the said bond, of the date foresaid, more fully bears; and now seeing I am desirous to have the foresaid sum repaid to me; therefore, wit ye me the said *A* to have made and constitute; likeas, &c. [*After inserting the procurators names, the place and time of compearance, as in the foregoing procuratory, add*], and upon payment, to accept and receive up from me, or my procurators in my name, authorized and empowered for that effect, the foresaid bond, with a valid and sufficient discharge thereof, in favour of the said *B*; and his foresaids, to be cancelled, or otherwise used and disposed upon by him, and his foresaids, in all time coming; and in like manner to compear within, &c. and then and there, for me, and in my name, and upon my account and behalf, to accept and receive from the said *B*, or any person empowered by him, the foresaid sum of                      sterling of principal, and haill bygone annualrents thereof resting preceding the said term; and upon payment and satisfaction, to deliver up to the said *B* the foresaid bond, with a valid and sufficient discharge thereof, to be cancelled, or otherwise used and disposed upon as his own writs and evidents in all time coming; and in case of the said *B* his absence or refusal, to pro-



est, that he may be liable in payment to me of the foresaid sum of                      sterling of liquidate expenses, by and attour the principal sum above mentioned, and of all cost, skaith, damages, and expenses shall happen to sustain or incur through the not-payment of the foresaid sums, in the terms of the bond above mentioned : acts, instruments," &c.

It sometimes happens, that dispositions or contracts of wadset bear a clause, that in case the rental of the lands fall so as they cannot be set at the rent they paid formerly, the purchaser is obliged to make intimation thereof. And a procuratory or mandate for making such intimation will run thus.—

" I, *A*, do hereby give full power, warrant, and commission to *B*, to go to the personal presence of *C*, and intimate to him, that the lands of *D*, formerly belonging to him, and by him disposed to *E*, from whom I have right, after my utmost endeavour, cannot be set in tack to a tenant for the ensuing year for more than                      pounds sterling ; and, in terms of a quality and clause in the disposition by the said *C* to the said *E*, to protest, that I shall not be accountable for any more than I receive ; and hereupon to take instruments in the hand of a Notary-public before witnesses, as effairs. In witness whereof," &c.

## TITLE IX.

## OF THE LESSER, OR MOVEABLE INSTRUMENTS.

IN the forgoing titles, I have endeavoured to instruct the Notary in such instruments as it is necessary for him to be skilled in, touching the completing or extinguishing of heritable rights: it remains now to treat of those that are requisite or usual on other occasions; and as they cannot be well reduced to any regular method, I shall treat of them, *either* as they are of a mixed nature, though moveable in themselves, yet relative to, or affecting heritage; *or* such as are used in the completion or transmission of moveable rights; *thirdly*, of instruments *ad factum præstandum*, and protestations of all kinds.



## SECTION I.

*Of Mixed Instruments.*

THE instruments I have thought proper to distinguish by the above title are these.—

Instrument kenning a woman to her terce.  
of interruption.

the vassal against the superior, anent  
irritant clauses in the vassal's charter,  
or on refusal of precept of *clare constat*.

against teind-masters.

of ejection and violent profits.

a tenant against the master.

against the Barons of Exchequer.

of ratification.

I. As to the first of these, when there is no provision flowing from the husband in favour of his wife, as a competent fee or liferent, then she must have recourse to the provisions of the law; that is, to a *terce*; which is the third of the tenements in which the husband died infest as of fee, provided in liferent to the wife surviving, by law or custom, though there be no provision or paction for that purpose;—the original whereof is from that obligation upon the husband to provide for his wife; which, therefore, positive law hath determined to a third of his moveables, if there be children in the family; and if there be none, to a half; but in either case she hath a third of his tenements. But the relict of a person whose estate stands already affected with a *terce* to his predecessor's widow, can claim only for her *terce*, while the former *tercer* lives, a third of two thirds of the estate, called upon that account the *lesser terce*. *Terce* extends not to lands within burgh, or holden burghage, nor to feu-duties, or other casualties of superiority, nor to reversions, or tacks, or patronage.

A *terce* is established by a widow's taking *brieves* out of the Chancery, directed to sheriffs or bailies, &c. to call an inquest of fifteen sworn men, and thereby to serve the *brieves*; which have two heads,—the one, *that the bearer was lawful wife to the defunct*; the other, *that he died in fee of such tenements*. This is a pleadable *brieve*, and hath no retour; but service alone is sufficient enough to give the wife interest as other liferenters have. By act 77, *parl.* 6, c. IV, it was statute,—“That where the marriage was not questioned in the husband's life, and the widow was holden and repute his lawful wife in his time, no exception in the contrary shall be sustained in the service of the *brieve*; but she shall be served and enjoy the *terce*, till it be declared in a petitory judgment, that she was not a lawful wife.”

To the serving this *brieve*, it is not requisite to call the heir either personally, or at his dwelling-house.

After the brieve is thus served, the sheriff or bailie &c. must also, if it be demanded, ken the relict to her terce; which is ordinarily done by causing the heir, if present, or one for him, if absent, cast lots or cavels for determining where the division shall begin, whether at the sun or the shade; that is, whether the division shall begin at the east or west; and so the division of the tenements proceeds by acres, two befalling to the heir, and one to the relict; wherein there ought to be marches set, and an instrument taken thereupon in the hands of a Notary-public, which is equivalent to a seisin.

*Instrument taken on a Precept from the Macers of Session, kenning a Woman to her Terce.*

“AT \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ in presence of me, Notary-public, and witnesses after subscribing, compeared personally *A*, as attorney for, and in name and behalf of *B*, relict of the deceased *C*, and with us passed to the ground of the lands and others after mentioned; having and holding in his hands a precept of kenning, directed by *D* and *E*, two of the ordinary macers before the Court of Session, sheriffs in that part lawfully constitute to the effect under written; which precept the said *A* procurator foresaid, exhibited and presented to *F* bailie in that part specially constitute by the said precept to the effect after mentioned, requiring him to put the same to due execution; which request the said bailie finding reasonable, he accepted the said precept, and presented and delivered the same to me Notary-public, to be read to the witnesses present, which accordingly I did, and whereof this is the tenor.—“We, *D* and *E*, two of the ordinary macers before the Lords of Council and Session, sheriffs in that part lawfully constitute to the effect under written, to *F*, &c. our lovites, or any one of you, conjunctly and severally, bailies and officers in that part spe-

ially constitute, greeting. Forasmuch as, by an inquest of fifteen sworn men, in a court holden at Edinburgh upon the                      day of                      , in obedience to brieves forth of the Chancery, direct to us to the effect after mentioned, it is found, that the said *C*, husband to the said *B*, died last vest and seized as of fee, at the faith and peace of our Sovereign Lord the King, in all and hail the lands of                      [*Here narrate the lands and other heritage which belonged to the defunct*], lying within the parish of                      , and sheriffdom of                      .

                    ; and that the said *B* was lawful spouse to the said umquhile *C*, the time of his decease, which happened in the month of                      , in the year                      .

                    ; and that, therefore, by the law and practice of this realm, she ought to have a reasonable terce, or third part, of all and hail the said lands of                      , and other lands and heritable subjects above mentioned, (excepting that part of the said lands of                      which are provided to                      *F*, relict of the deceased *H*, and mother to the said *C*, in liferent, conform to her contract of marriage, and seisin thereon in her favour), kened and set aside to her the said *B*, to be bruiked and possessed by her in liferent, during all the days of her lifetime:

The persons who passed upon the said inquest have, therefore, served the said *B* to the shadowy third of all and hail the said lands and others above mentioned, (excepting as said is); which shadowy third or terce fell to her by lot cast in our presence, as in the said *B* her service, and our act kenning her to her terce, following thereupon, at more length is contained. We charge you, therefore, strictly, and command, that incontinent this our precept seen, ye pass to the ground of the said lands of                      , and there acknowledge, cognosce, and ken, and enter the said *B*, or her attorney in her name, bearer hereof, in and to the said shadowy terce or third part of all and hail the said lands of                      , lying as said

is, (excepting always that part of the said lands of \_\_\_\_\_, liferented by the said *G*); and that by delivery to the said *B*, or her certain attorney or procurator in her name, bearer hereof, of earth and stone of the ground of the said lands, and other symbols usual and necessary in the like cases.\* The which to do, we commit to you, conjunctly and severally, our full power by this our precept, which is subscribed and sealed by us, at Edinburgh, this

\_\_\_\_\_ day of \_\_\_\_\_ years, before these witnesses," &c. After reading of the foresaid precept, the said *F*, bailie foresaid, passed to all and sundry the said lands particularly above mentioned, *respectivè et successivè* after others; and there, by virtue of the said precept, and office thereby committed to him, † he acknowledged, cognosced, kenned, and entered the said *B*, for her liferent-use allenarly, during all the days of her lifetime, in and to her shadowy third part or terce of all and hail the said unliferented lands of \_\_\_\_\_, lying as foresaid, wherein her said umquhile spouse died last vest and seized as of fee; and that by delivery to the said *A*, as procurator for, and in name and behalf of the said *B*, of earth and stone of the ground of each of the

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\* Sometimes the terce in the land is measured off, and divided from the other two parts by march-stones affixed; and the precept bears,—“and also, that ye cause survey and measure the said lands, and set and divide off to the said *B* her shadowy third part thereof; and that ye affix and set neiths and march-stones in all places needful for distinguishing and bounding the said shadowy third falling to the said *B*, from the other two thirds of the said lands, conform to the law and practice in the like cases.”

† “He measured off, divided, and bounded the said *B* her shadowy third part of the said lands from the other two third parts thereof; and for that end affixed and set march-stones and meiths in all places needful, conform to the law and practice thereanent; and thereafter,” &c.

aid lands *respectivè*. Whereupon, and upon all and sundry the premises, the said *A*, procurator foresaid, asked and took instruments in the hands of me, Notary-public subscribing. These things were done," &c.

II. Interruption is either natural or civil. Civil interruption is made by citation, or making a demand in a court of justice, or by a charge of horn-bog.

Natural interruption is, when a proprietor owns or challenges his right by some fact, and takes instruments in the hands of a Notary upon it; which instrument, by act 19, *parl.* 1696, must be recorded in a particular register at Edinburgh, within sixty days after the date, otherwise it does not militate against singular successors, but only against the person instrumented. And of such instrument the tenor follows.—

*Instrument of Interruption.*

" AT, and upon the bounds of the lands of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ years, and of his Majesty's reign the \_\_\_\_\_ year, compeared personally *A*, heritable proprietor of the foresaid lands, and passed with us to these parts and portions of new win out lands, within the marches after mentioned, commonly called \_\_\_\_\_, *respectivè et successivè*; having, &c. a charter made and granted by a noble and potent Earl, *B* Earl of \_\_\_\_\_, the date the \_\_\_\_\_ day of \_\_\_\_\_ years; whereby the said noble Earl sold, annailzied, and disponed to *C* and *D*, conjunctly and equally betwixt them, their heirs and assignees, heritably, the ground-right and property of all and haill that part or portion of the lands and barony of \_\_\_\_\_ called \_\_\_\_\_, comprehending the town and lands of \_\_\_\_\_ and \_\_\_\_\_, with the teinds, both parsonage and vicarage, of the same, with houses,

biggings, yards, tofts, crofts, mosses, muirs, meadows, grazings, shealings, outsets, insets, parts, pendicles, and universal pertinents thereof, as the same is bounded, meithed, and marched, as follows, viz. [*Here insert the bounding as in the charter*], with full and free liberty of commony and common pasturage, cāsting, winning, and leading fuel, feal, and divot, in all the mosses, muirs, and other bounds of commony of the said barony of \_\_\_\_\_, according to use

and wont, for the use of the said *C* and *D*, conjunctly and equally, as said is, and their foresaids, and their tenants, servants, and possessors dwelling upon the said lands of \_\_\_\_\_, all lying within the parish of \_\_\_\_\_ and sheriffdom of \_\_\_\_\_;

and after reading of the said charter, the said *A*, as succeeding to the said *C* and *D*, his authors and predecessors in the foresaid lands, by progress, represented, that *E*, his men, tenants, and servants, had most wrongously and unjustly encroached upon the said bounds, meiths, and marches, of the said *A*, his said lands of \_\_\_\_\_, as they are expressed and

set down in his author's bounding charter abovē expressed; and that by building houses and yards thereon, inclosing and tilling the ground, labouring and sowing the same within the bounds of the said *A* his property, at the said places commonly called \_\_\_\_\_

\_\_\_\_\_, to the extent and value of \_\_\_\_\_ bolls of yearly rent, which tends to the said *A* his great loss and damage; and, therefore, the said *A*, at the said respective places called \_\_\_\_\_ and \_\_\_\_\_,

made civil interruption against the foresaid intrusion and encroachments made by the said *E*, and his men, tenants, and servants on his property; and that by throwing down some stones from the dikes, and pulling of some divots from the houses builded on the said bounds, and pulling up two or three handfuls of corn which was growing upon the said bounds; and protested, that the said *E* might be liable to him for all cost, skaith, damages, and expenses of law which



may arise from his said intrusion and encroachments made upon his lands, and within his marches; and thereupon took instruments, at the said several places, in the hands of me Notary-public subscribing. These things were so done upon the ground of the foresaid bounds, betwixt the hours of                      and                     , or thereby, in the afternoon, upon the day, month, and year above set down, in presence of *F* and *G*, witnesses to the premises specially called and required," &c.

III. Instruments are sometimes necessary against superiors, when there are irritant clauses contained in the vassal's charter, whereby, in case of sale of the lands, he is obliged to make the first offer of them to the superior, upon his giving as great a price as any other person. Such is the following.—

*Instrument by a Vassal against his Superior, upon making him the First Offer of his Lands.*

"AT                     , &c. compeared personally *A*, heritor of the lands of                     , lying within the parish of                     , and sheriffdom of                     ; and with us passed to the personal presence of *B*, superior of the said lands; and there the said *A* did make true and lawful offer to the said *B* of the said lands of                     , for the sum of                     , which is the price truly offered by *C* for the same, in the terms of a prohibitory clause in the original rights and infestments of the said lands, whereby it is provided and declared, that it shall not be lawful to the proprietors thereof to sell the same, without making the first offer of the same to the superior, they always giving as much for the said lands as any other person; and in respect the said *B* refused to accept of the said offer, to make payment to the said *A* of the said sum of                      offered therefore by the said *C*, as said is; therefore, the

said *A* protested, that the prohibitory clause and condition of the said original rights was purified and implemented by the offer above written, and that it may be lawful to him, or any of his successors in time coming, to sell and dispose of the lands and others foresaid at pleasure, and freely, without any stop or hinderance whatsoever, to any person or persons they shall think fit and expedient. Whereupon," &c.

Formerly instruments were likewise sometimes necessary against subject-superiors refusing to grant a precept of *clare constat* for infefting the heir of his deceased vassal. In that event, the apparent heir behoved to serve heir in special to his predecessor, and retour his service to the Chancery : whereupon he got a precept out of the Chancery, to charge the superior to enter and receive the heir so retoured. With this precept, in company of a Notary and witnesses, he passed to the presence of the superior, and, after offering the casualties due to him, he presented a precept of *clare constat*, requiring, under form of instrument, that he, the superior, in obedience to his Majesty's precept, would sign the same : and upon his refusal or delay, he brought back the precept with the instrument to the Chancery ; whereupon he got out a second precept ; which the vassal, in like manner, offered under form of instrument to the superior. And if the superior still persisted in his refusal to comply, upon production of this second precept at the Chancery, with the instrument thereon, the vassal got a third precept, commanding the superior to infeft his vassal ; with certification, if he did not comply, there was a precept directed to the sheriff of the shire, or the superior of the person refusing, (if he has one), commanding him to infeft the vassal. The first of these precepts, for distinction's sake, is called *Præcipimus* ; the second, *Meminimus* ; and the third, *Quod nisi feceritis* : and the using of this order is generally called the *running of the precepts*. If the

superior still refused access to the vassal, then the instrument was formally taken at the gate of his dwelling-house, and a copy affixed thereon; or if the superior was out of the kingdom, letters of supplement, at the instance of the heir served and retoured in special, was granted by the Lords of Session, requiring the superior to give obedience to the precept directed forth of the Chancery upon sixty days warning. Of which in the following examples.

But by the act of 20 Geo. II, it is declared, that any person duly served and retoured heir in any lands held of subject-superiors in Scotland, and any person who shall acquire such lands from a proprietor duly vested and seized therein, and who shall obtain a conveyance containing a procuratory of resignation in his favour, may apply to the Ordinary on the bills in the Court of Session, praying a warrant for letters of horning, to charge the superior to receive or grant new infeftments to such heir or purchaser. And upon production to the Lords of Session of a special retour, or of a procuratory of resignation, or of a conveyance, the Lords shall grant a warrant for letters of horning, upon fifteen days charge, to charge the superior to receive or grant the infeftment to such heir or purchaser. This alteration in the form of procedure against superiors, has rendered the former method of requisition unnecessary: however, examples of the instruments shall be given.

*Instrument by an Heir served against his Superior refusing to infeft him in his Predecessor's Lands.*

“ AT                      , &c. compeared *A*, eldest lawful son and heir served and retoured in special to the deceased *B*, his father; and with us passed in the personal presence of *C*, superior of the lands and others

under written ; having, &c. a precept directed forth of our Sovereign Lord's Chancery, in the first form thereof, to the said C, commanding him to infest the said A in the lands and others after specified ; of which precept the tenor follows,—*Georgius, Dei gratia, &c.* [*Here take in the precept verbatim, with the subscription and direction on the foot or back thereof ; and then say*], and then and there the said A did exhibit, present, and give to me the said Notary-public, the precept above written, to be openly read, in presence of the said C, superior foresaid, and of the witnesses under written ; and which accordingly I did : after open and public reading of which precept, the said A (to the end he might the more easily be infest in the said lands) did likewise exhibit, produce, present, and offer, to the said C, superior foresaid, a precept of *clare constat*, which he had ready formed, drawn, and extended, with pen and ink in his hand ; and required him, in obedience to the foresaid precept, directed forth of his Majesty's Chancery, to subscribe the same ; and upon his signing thereof, instantly offered to pay the nonentry duties. And in regard the said C, superior foresaid, would give no satisfactory answer to the said request, and refused to subscribe the said precept of *clare constat*, and infest the said A in the lands and others foresaid ; therefore, he protested, that the said C might amit and lose the casualties of superiority of the lands and others foresaid during his lifetime ; conform to the laws and daily practice of Scotland in the like cases ; and farther, that he might be liable to him in all cost, skaith, damage, and expenses he might anywise sustain or incur through the said C his not giving obedience to the precept above written. Whercupon," &c.

*Instrument in the Second Precept.*

“AT \_\_\_\_\_, &c. compeared personally A, procurator specially constitute by B, heir served and

retoured to *C*, by virtue of his letters of procuratory, of the date the      day of      years; and pass- to the mansion-house of      , where *D*, superior of the lands under written, his family has their actual residence, and where the said *D* was personally with- in, as the said procurator, and *I*, the said Notary-pub- lic, were certainly informed by *E* and *F*, his servants. And there the said *A*, as procurator for, and in name of the said *B*, declared he had attended at the gate of the said mansion-house since      hours before noon, but could get no access to the said *D*; and, therefore, he exhibited and produced, at the said gate, the precept of the Chancery in the second form there- of; whereof the tenor follows — *Georgius, Dei gratia, &c.* [*Here insert the precept as above directed*]. And conform to the said precept, the said *A*, as procurator foresaid, and in name and behalf of the said *B*, after he had caused me to read publicly the said letters of procuratory, and precept forth of the Chancery, de- sired, and formally required, the said *D*, to give state and seisin of all and hail      , lying      , to the said *B*, as nearest and lawful heir of conquest to the deceased *C*, his brother, or to his attorney or procurator, bearer of the said precept, without delay; and the said *A*, as procurator, and in name and be- half foresaid, presented at the said gate a precept of *clare constat* to be authentically subscribed by the said *D*, before famous witnesses subscribing with him, with pen and ink; whereby the said *B*, as heir of conquest to his said deceased brother, might be infeft and seized in the said lands and others foresaid, conform to the said precept forth of the Chancery; which precept of *clare constat*, the said *A*, as procurator foresaid, caused me publicly read. And in respect of the said *D* his refusal to subscribe the said pre- cept of *clare constat*, to the effect foresaid, the said *A*, as procurator, and in name and behalf of the said *B*, protested against the said *D*, for farther orders, cost, skaith, and damage, and that he should amit and lose

his casualties of superiority of the lands and others foresaid, conform to the laws and consuetude of this realm. Of the which protestations the said *A*, as procurator foresaid, affixed and left a copy upon the said gate, after he had given six several knocks thereupon; and thereupon, and upon all and sundry the premises, asked and took instruments in the hands of me Notary-public subscribing. These things were done," &c.

*Instrument on the Third Precept by an Heir served and retoured against his Superior out of the Kingdom, at the Cross of Edinburgh, and Pier and Shore of Leith.*

" AT , &c. compeared personally *A*, messenger and procurator specially constituted by virtue of our Sovereign Lord's letters under his Highness's signet; having, &c. a precept directed forth of his Highness's Chancery, in the third form thereof, to *D*, superior of the lands after specified, and to his bailies, for infesting and seizing of the said *B* in all and haill, &c. to be holden of him as superior thereof; as the said precept, dated , at more length bears; and passed to the market-cross of Edinburgh, pier and shore of Leith, *respectivè et successivè*, the one after the other, and after the crying of three several oyeses, open proclamation, and public reading of the said letters, at both the said places, *respectivè et successivè*, as is, the said *A*, messenger and procurator for the said said *B*, lawfully commanded and charged the said *D*, superior, to infest and seize the said *B* in the lands and others above written, to be holden of him in like manner, and as freely in all respects, as his said deceased father held the same before of him; conform to the said precept directed upon his retour; and for that effect, the said *A*, procurator foresaid, offered him a precept of sesin, which he had ready formed, with pen and ink in his hand, to subscribe the same,

conform to the daily practice used in like cases, within sixty days next after the said charge, because he was then forth of the realm; with certification to him, if he failed, there would be a precept directed forth of the Chancery to the sheriff of the shire, for infesting the said *B* in the lands and others foresaid; and the said *A*, as procurator foresaid, affixed and left a just copy of the said letters at the said market-cross of Edinburgh, and another at the pier and shore of Leith, *respectivè et successivè*. Whereupon," &c.

IV. It is likewise necessary sometimes to take instruments against teind-masters who delay the teinding of the corns; and it appears by the narrative of the *act 73, parl. 6, Ja. VI*, that the labourers of the ground sustained great skaith and inconveniency through the default of the teinding of their corns in due time, by the malice of such as have titles or tacks to such teinds oftentimes causing the labourers of the ground to lose their corns, or fall in danger of spuilzie: Wherefore it is statute, that if the person having right to the teinds, fails to levy his teind timeously, the labourer, upon making premonition on three Sabbath-days after the corns are cut down, which is by the *act 48, parl. 21, Ja. VI*, restricted to two Sabbaths, may cause two honest neighbours teind upon oath the said corns; and thereafter, by the *act 5, parl. 21, Ja. VI*, it is appointed, that the teinding be at three several times, viz. the infield at one time, bear at another, and the outfield corn at another time; and that eight days intervene after each complete shearing. And by the *act 9, parl. 22, Ja. VI*, it is statute, that it shall be lawful to all heritors and labourers of the ground, eight days being expired after the complete shearing of every one sort of corn above written, or at least when the same are shorn till about a tenth part, to require the teind-master to come and teind the same within four days; and the teind-master, if he dwell not within the parish, is or-

dained to have a servant for teinding, and to intimate his name and place of abode publicly the last Sunday of           , or first Sunday of           , yearly, in presence of the minister of the parish and parishioners, that no ignorance may be pretended thereof; which factor, so designed, shall be warned, either personally, if he can be apprehended, or by intimation to be made to the minister of the parish, and at the fore-said place to be designed for the factor's remaining; which requisition being so made, and neither the teind-master himself, nor any person appointed by him, coming to make thankful teinding, it shall be lawful to the said heritors and labourers of the ground to separate the stock from the teind, and to lead and carry their stock away, and either to stack the same within their barn-yards, or to place the same in their barns, leaving the teind upon the ground; which they shall be holden to keep and preserve undestroyed or eaten by beasts for the space of eight days after the expiring of the time of the said requisition; which corns being so led and stacked, or placed in barns, and the teind being left on the ground, and preserved as said is, it shall be sufficient to liberate them of all danger of spuilzie, or wrongous intromission, which may be moved against them therefore in any time to come. Take the following example.—

*Instrument of Requisition to a Teind-Master to teind  
Corns in terms of the Act of Parliament.*

“AT, &c. compeared personally *A*, heritor of the lands of           , lying within the parish of           , and sheriffdom of           ; and with us passed to the personal presence of *B*, factor and servant constitute and designed by *C*, owner [or tacksman] of the teind-sheaves of the said parish of           ; and represented to the said *B*, that eight days were fully elapsed and expired since the complete shearing of



his haill corns \* growing upon the said lands, occupied and possessed by him this instant crop and year of God ; and, therefore, the said *A*, owner of the said corns, desired and required the said *B*, factor foresaid, to come and make just and thankful teinding of the said corns, standing shorn upon the ground of the said lands of , within four days next after this present requisition ; and in case he failed to do so, protested, that it might be lawful for him to separate the stock from the teind upon the ground, and to lead, transport, and carry away the said stock to his barn-yards, leaving the teind upon the ground, and so may be free from any action of spuilzie, or wrongous intromission with the said teinds ; and declared he should preserve the teind so left upon the ground uneaten by beasts for the space of eight days after the expiring of this requisition ; conform to the act of parliament made thereanent. Whereupon," &c.

V, VI. Instruments are also requisite in ejection of tenants, and obtaining possession of the ground, and for violent profits against the tenants by the heritors, and against the heritors by the tenants renouncing their tacks.

Of old, the order of removing tenants was this.—The master of the ground did verbally intimate to the tenant to remove at the next Whitsunday ; and the only solemnity requisite was, that before the said term he appeared before the door of the tenant, and broke a lance there, as a symbol of breaking the tacit relocation betwixt them ; whereupon the second day after Whitsunday, he came *brevi manu*, and expelled the tenant, or, at least, laid out some of his goods, to complete the solemnity of his removing. Hence arose many quarrels, violences, and breaches of the public peace, as when the tenant had any rea-

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\* Or you may condescend upon such a species of corns.

son or pretence why he could not remove, or otherwise was unwilling, and not compelled by law or public authority, but by private force.

For remeid whereof, that excellent statute concerning warning and removing of tenants was made, *parl. 6, Q. Mary, act 39*, prescribing the order of removing, thus.—“That the master of the ground give a precept of warning in writ, commanding his officer, (who may be any person he pleases), for whose name a blank is left in the precept, to go, forty days preceding Whitsunday, and intimate to the tenant, that he remove himself, his family, subtenants, goods and gear, at the said term, and leave the tenement void and redd, that the warner may enter into possession.” This may be done either personally, or at his dwelling-house, and the officer must leave a copy of the said precept affixed upon the ground of the said land; and by the same space it must be done at the kirk-door, at the time of dissolving the congregation from the first sermon, leaving a copy thereof affixed upon the said door; all which must be done before two witnesses required for that effect, and executions made conform by the officer; which, without any other instrument or solemnity, doth sufficiently prove, unless it be improven. Upon this order, the pursuer hath a privileged action, upon six days warning only, without continuation; and after having obtained decreet of removing, and raised horning thereon, and caused execute the same against the tenant, if he still wilfully refuse to remove, the master will get letters of ejection direct, by deliverance of the Lords, to the sheriff of the shire, for ejecting him. And as at this ejection there is ordinarily a Notary present, the master takes instruments in his hands, upon the tenant's being ejected, and his getting possession. But if the master rather choose to insist for violent profits against the tenant, than to eject him; after having obtained decreet of removing, and executed horning thereupon, he takes

instruments in the hands of a Notary, and protests for violent profits, and then raises a process for the same before the judge-ordinary against the tenant.

A considerable alteration has taken place in our law in this respect, by the act of sederunt, 17th January 1756; whereby it is declared, *1mo*, That where a tenant is bound by his tack to remove without warning, at the issue or determination of his tack, it shall be lawful to the heritor, or other setter of the tack, upon such obligation, to obtain letters of horning; and thereupon to charge the tenant with horning, forty days preceding the term of Whitsunday, in the year in which his tack is to determine, or forty days preceding any other term of Whitsunday thereafter. And upon production of such tack and horning, duly executed, to the deputy-sheriff or steward, or their substitutes, of the shire or stewartry where the lands lie, they are thereby authorized and required, within six days after the term of removal appointed by the tack, to eject such tenant, and to deliver the possession void to the setter, or those having right from him.

*2do*, Where the tenant hath not obliged himself to remove without warning, in such case it shall be lawful to the heritor, or other setter of the tack, in his option, either to use the order prescribed by the act of parliament, made in the year 1555, entitled, *Act anent the warning of tenants*, and thereupon pursue a warning and ejection, or to bring his action of removing against the tenant before the judge-ordinary. And such action being called before the judge-ordinary at least forty days before the term of Whitsunday, shall be held as equal to a warning execute in terms of the foresaid act; and the judge shall thereupon proceed to determine in the removing, in the terms of that act, in the same manner as if a warning had been executed in terms of the foresaid act of parliament.

*3tio*, Where a tack is assigned, and the assignation

not intimated by an instrument, or where the lands are subset in whole or in part to subtenants, such horning, execute as aforesaid, or where process of removing and decreet is obtained, or where warning in terms of the act 1555 is used against the principal or original tacksman, the same shall be effectual against the assignees or subtenants, one or more; and the action of removing against the principal or original tacksman, and decreet of removing following thereon, shall be effectual against such assignees and subtenants as aforesaid, and shall be sufficient ground of ejecting them, any thing in the former practice to the contrary notwithstanding.

On the contrary, if a tenant, after expiring of the term of his tack, designs not to continue the possession, he must subscribe and deliver to his master, forty days before the term of Whitsunday, a renunciation of his tack and possession; consenting that he enter *brevi manu*, without hazard of ejection; whereupon the tenant must take an instrument in the hand of a Notary, as a solemnity requisite; which is sufficient to instruct the overgiving, as being the habile way approven in law. Albeit, in other cases not approven in law, instruments of Notaries prove not the deed of the party; in this case it avoideth the tack, and is probable by instrument if the tack be expired; but during the tack the instrument will not prove the acceptance of the renunciation. See the three following examples.—

*Instrument of Ejection and Possession.*

“ AT \_\_\_\_\_, &c. compeared personally *A*, heritable proprietor of the lands and others under written, with *B*, sheriff-depute of the sheriffdom of \_\_\_\_\_, as lawfully charged, by virtue of our Sovereign Lord's letters of ejection, dated and signetted \_\_\_\_\_, to the effect under written, by *C*, messenger, as the said letters of ejection, and execu-

tion of the charge, of the date , at length bear ; and passed with us to the mains and manor-place of , presently possessed by *D* ; and there the said *B*, conform to the said letters of ejection and charge given to him for that effect, not only lawfully ejected, flitted, and removed the said *D*, and *E*, his spouse, their bairns, servants, and family goods and gear, forth and from their pretended possession of the said mains and manor-place of , biggings, yards, orchards, parts, pendicles, and pertinents thereof, by ejecting and openly casting forth of the said manor-place, the insight plenishing of the said *D* his house, and outputting themselves and servants forth thereof, and the drowing out of the said *D* his fire, as use is in the like cases ; but also put the said *A* in the possession of the same, to the effect he and his tenants may enter to the bruiking, enjoying, and possessing thereof, as his own proper heritage in all time coming, by kindling and inputting fire, in the said *A* his name, within the fire-house of the said manor-place, and by delivering the keys of the said house, barns, stables, and other office-houses in and about the said place ; conform to the said letters of ejection, laws and practice of this kingdom, in all points. Whereupon, and all and sundry the premises," &c.

*Instrument the Master against the Tenant for Violent Profits.*

" AT , &c. compeared personally *A*, heritor of the town and lands of ;\* and with us passed to the personal presence † of *B*,

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\* Or,—“ *C*, as procurator for *A* of , whose power of procuratory was clearly known to, and understood by me, Notary-public subscribing.”

† Or,—“ dwelling-house.”

tenant and possessor of the said town and lands ; and there represented, that whereas the said *A* had caused duly warn the said *B*, by virtue of a precept of warning, and thereupon had pursued a process of removing before the sheriff of \_\_\_\_\_, in which he had got a decreet of removing against the said *B*, and had thereupon raised letters of horning, and by virtue thereof caused charge him to remove ; and yet, notwithstanding of all which, the said *B* did continue violently to possess the said town and lands of \_\_\_\_\_

contrary to all law and justice, and in high contempt of his Majesty's laws and letters above written, issued out against him in his Majesty's name, upon which he is charged to remove, as said is ; and, therefore, the said *A*\* protested, that the said *B* might be liable, not only in violent profits, but also for all cost, skaith, and damage to be sustained through the said *B* his violent possession in manner foresaid. Whereupon," &c.

*Instrument taken by a Tenant upon giving in a Renunciation to the Heritor.*

" AT, &c. compeared personally *A*, tenant and possessor of the town and lands of \_\_\_\_\_, heritably pertaining and belonging to *B*, and with us passed to the personal presence † of the said *B* ; ‡ having and holding in his hand a valid and formal renunciation of the said town and lands of \_\_\_\_\_ duly subscribed by him, of the date the \_\_\_\_\_ day of \_\_\_\_\_ years ; whereby the said *A*, tenant foresaid, (for the causes therein specified), re-

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\* Or,—*C*, procurator foresaid."

† Or,—“ dwelling house.”

‡ Or,—“ *D*, chamberlain or factor to the said *B*, as he who is empowered by letters of factory from him to output and input tenants, and to receive renunciations of possessions from them.”

nounced, discharged, and *simpliciter* upgave, from him, his heirs, and others therein mentioned, all right, title, and interest, tacks, kindness, good will, property, and possession, which he had, has, or anywise may pretend to have to his occupation of the said town and lands of \_\_\_\_\_, lying within the parish of \_\_\_\_\_, and sheriffdom of \_\_\_\_\_

\_\_\_\_\_ ; and that to and in favour of the said *B*, heritable proprietor thereof, and his heirs and assignees, with power to them, and their men, tenants, servants, subtenants, and others in their names, peaceably to enter thereto, at the feast and term of \_\_\_\_\_

\_\_\_\_\_ next to come, occupy, labour, set, use, and dispose thereupon in all time coming thereafter, without any precept of warning, or decret of removing ; and thereby bound and obliged him, his heirs, executors, and successors, to flit and remove himself, his wife, bairns, servants, family, subtenants, cottars, goods and gear, forth and from the occupation of the lands, houses, biggings, yards, and pertinents thereof above written, at the said term of \_\_\_\_\_ next to

come, as the said renunciation more fully bears. After production, exhibiting, and public reading of the said renunciation, the said *A*, tenant foresaid, did give up and deliver the same to the said *B*,\* and declared he would flit and remove himself, and his foresaids, from the possession and occupation of the said lands, at the said term of \_\_\_\_\_ next to come, and leave the same void and redd for the said *B*, and his foresaids, to be possessed by them in all time thereafter ; and protested, that he might be free thereof, and from payment of any rent therefore, in all time coming, in respect of the renunciation above writ-

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\* Or,—“ *D*, chamberlain foresaid, for the use of the said *B* ;” or,—“ did leave the same at the said *B* his dwelling-house, [or at the dwelling-house of the said *D*, chamberlain foresaid, for the use of the said *B*], because he could not be personally apprehended.”

ten; and that it may be leisome and lawful to him to leave the same at the said term, and to go, live, and reside where he should think fit thereafter. Whereupon," &c.

VII. To these may be added the following instrument.—

*Instrument taken against the Barons of Exchequer at passing a Signature of Lands.*

"AT \_\_\_\_\_, &c. in presence of the Right Honourable *L*, Lord Chief-Baron of his Majesty's Exchequer in that part of Great Britain called Scotland, and remanent Barons of his Majesty's said Exchequer, sitting in judgment, and also in presence of me Notary-public, and witnesses after named, compeared personally *A*, and there declared, that he having purchased the lands of *B*, salmon-fishing upon the water of *C*, and heritable office of justiciary within the said bounds, from *D*; and, upon his resignation, procured a signature past his Majesty's royal hand, containing a *novodamus*, and an erection of the lands, fishing, and heritable offices, and others therein contained, in a free barony; and their Lordships having been pleased, upon the application of *E*, *F*, *G*, and other parties pretending to have interest in the said matter, to cancel and roll out the clause containing the said office of justiciary out of the said *A* his signature; therefore, he did protest, that the doing thereof might nowise prejudice his right or possession of the said office of justiciary in time coming; and that his protestation might be recorded in the books of Exchequer: which protestation was admitted and received by the said Lord Chief-Baron, and remanent Barons of Exchequer, and ordained to be recorded in the Exchequer-books; and their Lordships reserved to the said *A*, to prosecute and pursue a declarator of his right before the



judge-ordinary, as accords, notwithstanding of the  
 cancelling or rolling out of his signature the foresaid  
 office of justiciary. Whereupon, &c. These things  
 were done in the high Exchequer-house of the new  
 session-house of Edinburgh, betwixt the hours of  
 and before noon, place, day, month,  
 year of God, and king's reign *respectivè* above written,  
 before and in presence of ,  
 , and , witnesses to the  
 premises," &c.

VIII. We may also to these join this other instru-  
 ment. —

*Instrument of Ratification on the Back of the Deed rati-  
 fied.*

" AT , &c. the which day, in pre-  
 sence of *A*, one of his Majesty's justices of the peace  
 in the shire of , and me Notary-public,  
 appeared judicially the within-designed *B*, and  
 there, outwith the presence of the also within-named  
 and designed *C*, her husband, judicially ratified, ho-  
 nologated, and approved the within written discharge  
 and renunciation, *or* disposition and assignation, *or*  
*other deed so ratified*], in the haill heads, articles, and  
 clauses thereof; and gave her solemn oath, as she  
 should answer to God, that she was nowise induced,  
 coacted, nor compelled to the making, granting, and  
 subscribing of the foresaid discharge and renuncia-  
 tion, nor of this present ratification thereof; but that  
 she did the same of her own accord, free will, and  
 motive; and that she shall never come in the contra-  
 dict thereof, nor quarrel, impugn, nor offer to reduce  
 the same, upon the head of fraud, force, circumven-  
 tion, privilege of revocation, or upon any other  
 ground, account, or reason whatsoever, directly or  
 indirectly, in judgment, or outwith the same, in time  
 coming. To the which oath the said *A* interponed

his authority : Whereupon, and all and sundry the premises, *D*, as procurator for the within-designed *A* asked and took instruments in the hands of me Notary-public subscribing. And in testimony and verity of the haill premises, the said *B*, and the said *A* justice of the peace foresaid, and I, the said Notary public, have subscribed these presents, place, day month," &c.

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## SECTION II.

### *Of Instruments of Possession and Intimation.*

As infeftments of heritage are completed by an instrument of seisin ; so dispositions to moveables are completed by delivery of the moveables, and an instrument taken thereon ; and as, in the right of lands, the laſt disposition with the first infeftment will be found preferable ; so, in moveables, the last disposition with the first instrument of possession, by virtue thereof (*ceteris paribus*), will have the preference. But a disposition to moveables, and an instrument of tradition thereon, cannot be said to be a real transmission of the property, if the possession be retained and the disponent's liferent reserved ; as was found 17th December 1675, creditors of Masterton *contra* creditors of Thin, observed by Stair. And even where symbolical possession is taken, if the disponent shall again dispoſe to a third party, and that party be put in the natural possession ; if no fraud be qualified, this last will be preferred : so that in dispositions of this nature, not only tradition, but likewise possession, is requisite to the full accomplishment of the disposition.

*Instrument of Possession.*

“AT, &c. compeared personally *A*, to whom, and in whose favour the disposition after mentioned, of the date \_\_\_\_\_, and containing therein a clause of possession, is made and granted by *B* ;\* and with \_\_\_\_\_ is passed to the personal presence of the said *B*, in \_\_\_\_\_ his dwelling-house of \_\_\_\_\_ ; having, &c. the said disposition, whereby, for the causes therein specified, the said *B* sold, assigned, and disposed, from \_\_\_\_\_ him, his heirs, executors, and all others his assignees, \_\_\_\_\_ and in favour of the said *A*, his heirs, executors, and assignees, all and haill his insight household-plenishing, such as chairs, hangings, tables, table-cloths, napkins, cabinets, trunks, chests, presses, feather-beds, blankets, sheets, cods, cod-wares, looking-glasses, chests of drawers, chimneys, candlesticks, plates, trenchers, spoons, knives, and forks, and generally, but prejudice of the specialty foresaid, all gold, silver, brass, copper, pewter, iron, and timber work, and haill other goods and gear, of whatsoever kind, nature, or denomination the same be, pertaining and belonging to the said *B*, and in his custody and possession, within his said dwelling-house presently possessed by him ; and also, all horse, neft, sheep, and all other cattle, plough-gear, instruments of husbandry, and every other sort of outside plenishing of whatsoever kind or denomination the same may be, upon his possession of \_\_\_\_\_, belonging to him ; all specified and contained in a particular inventory subscribed by him, of the date of the said disposition, and therewith delivered up by him

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\* But if the disposition contains precept of possession, and the possession be given by a commissioner, say,—“containing the precept of possession after inserted, is made and granted by *B*, who with *C*, commissioner specially constitute by the said precept of possession, passed with \_\_\_\_\_ Notary-public, and witnesses aforesaid, to the dwelling-house of *B*, having,” &c.

to the said *A*, and which is thereby declared to be part of the said right and disposition, and therein holden as repeated *brevitatis causa*; as the said disposition, containing\* clause of possession, clause of warrandice, and several other clauses, in itself more fully bears: and, in like manner, having and holding in his hands the particular inventory above mentioned of the date of the said disposition, containing the whole particular goods, gear, plenishing, and other therein mentioned; as the same also more fully bears which disposition† and inventory above mentioned the said *A* exhibited and presented to the said *B* humbly requiring him, in terms of the above clause of possession, *ex propriis suis manibus*, to give and deliver to him real, actual, and corporal possession of the household-plenishing, and other goods and gear above expressed, contained in the said disposition and inventory above written. Which request and desire being just and reasonable the said *B* accepted and received the said disposition and inventory into his hands, and gave the same to me Notary-public, to be read and published, in presence of the witnesses after named. All which, accordingly, I did. ‡ After read

\* “Precept of possession,” if there is one engrossed.

† If possession be given by a commissioner, say—“above written, containing therein the said precept of possession and inventory above mentioned, the said *A* exhibited to the said *C*, requiring him to put the office committed to him by the said precept to due execution. Which request being found reasonable by the said *C*, he accepted of the said disposition and inventory into his hands and delivered the same to me Notary-public,” &c.

‡ If possession is given by a commissioner in virtue of precept of possession, say,—“and of which precept of possession the tenor follows.—And to the effect the said *A* may be put in the actual and corporal possession of the said household-plenishing, and others above disposed, the said *B*, by these presents, make, constitute, and ordain

ing and publishing of the which disposition\* and inventory, in manner foresaid, the said *B*, for implementing, completing, and fulfilling of the foresaid right and disposition, gave and delivered to the said *A*, *ex propriis suis manibus*, real, actual, and corporal possession of the household-furniture, and insight and out-sight plenishing above specified, and particularly enumerated and expressed in the foresaid disposition and inventory above mentioned; and that by giv-

you, and each of you, conjunctly and severally, my very lawful, undoubted, and irrevocable procurators, actors, factors, and special commissioners, to the effect under written; hereby charging and requiring you, and each of you, conjunctly and severally, as said is, that incontinent, upon sight hereof, you pass to my dwelling-house, where the household and out-sight plenishing and others above disposed are, and there give to the said *A* real, actual, and corporal possession, of all and hail the household and out-sight plenishing, and others above disposed, contained in the inventory above specified, and hereof as repeated *brevitatis causa*; and that by giving and delivering to the said *A*, or his certain procurator or procurators in his name, bearers hereof, of some parcels or pieces of the said household and out-sight plenishing, and of some of the several species of the said cattle, as symbols for and in name of the whole, as use is: and this in no wise ye leave undone: the which to do, I commit to you, and each of you, conjunctly and severally, my commissioners in that part foresaid, my free and irrevocable power, by these presents. In witness whereof," &c.

\* If possession be given by a commissioner, add,—“and precept of possession therein contained, the said *C*, commissioner foresaid, gave and delivered to the said *A*, real, actual, and corporal possession of the goods, gear, and others above written, contained in the disposition and inventory above expressed; and that by delivery, &c. after the form and tenor of the said disposition, and precept of possession therein contained, and inventory above mentioned, in all points, none opposing,” &c.

ing and delivering to the said *A*, a particular species of all or most of the several sorts of plenishing, goods, cattle, and others above disposed, as use is, all to be bruiked, enjoyed, and possessed by the said *A*, and his foresaids, in time coming; conform to the tenor of the disposition and inventory above mentioned, in all points, none opposing or contradicting the same. Whereupon, &c. These things were done at and within the said *B* his dwelling-house, where the goods, gear, outsiight and household plenishing, and others above written then were, betwixt the hours of," &c.

Instrument of vendition of ships being of the same nature, take an example.—

*Instrument of Vendition.*

" AT \_\_\_\_\_, &c. compeared personally *A*, and passed with us to the pier and harbour of \_\_\_\_\_, where the ship called the \_\_\_\_\_ of \_\_\_\_\_ was lying, and likewise to the personal presence of *B*, shipmaster there, and sole owner of the said ship; having, &c. principal letters of vendition, of the date hereof, made and granted by the said *B* to the said *A*; whereby, for the causes therein specified, the said *B* sold, assigned, and disposed, in favour of the said *A*, his heirs, executors, and assignees, all and haill a just and equal \_\_\_\_\_ part of her haill masts, sails, anchors, cables, tows, float-boat, rigging, and furniture thereto belonging, with a just and equal

share of the haill freights and profits of the said ship, from and after the date of the said vendition; as the same more full bears. Which vendition above written, the said *A* did exhibit and deliver to me the said Notary-public, to be read in presence of the said witnesses; which I did. After public reading of the which vendition, the said *A* required and desired the said *B*, *propriis manibus*, to put him in

the possession of the said just and equal part of the said ship, float-boat, masts, sails, anchors, cables, tows, and others above written. Which request and desire being just and reasonable, the said *B* acquiesced in, and *propriis manibus* gave and delivered to the said *A*, real, actual, and corporal possession of a just and equal part of the said ship, float-boat, masts, sails, cables, anchors, tows, and others above written, by giving and delivering to him the helm-pin, best anchor-ring, oar of the float-boat, and a piece of the cable in his hands, and the main-mast and one of the sails in his arms, as use is. Whereupon, and all and sundry the premises, the said *A* asked and took instruments, &c. These things were done on board the said ship, lying in the said harbour of , betwixt the hours of before [or after] noon, place, day, month," &c.

All moveables, or rights, whether heritable or moveable, not completed by infeftment, or which are perfect without infeftment; the current profits of heritable rights completed by infeftment, actions, bonds, &c. may be conveyed and transmitted by assignation; and he who grants the assignation is called the *cedent*, and he who receives it, *assignee*. Under assignations are likewise comprehended transpositions, when the assignee transfers or passes over his right to a third party; and retrocessions or repurchases, restoring the cedent to his former right. But neither of these are complete valid rights, until they be intimated to the debtor by the party having right, or his procurator, in presence of a Notary and two witnesses, and instruments taken thereupon by the party or procurator in the hands of the Notary.

Intimation is a legal and solemn deed, made by, and given under the hand of a Notary-public, in presence of two or more witnesses specially required thereto, to a party, either personally or at his dwelling-house, to put him *in mala fide* to do or transact any

thing against, or prejudicial to, what is contained in the said instrument of intimation.

By a *legal and solemn deed* is not to be understood, that intimation is such a legal diligence as can be prevented and excluded by another diligence; but only as fulfilling and completing of one's right: For though it may be thought, that the intimation of an assignation, &c. was formerly only used to put the debtor *in mala fide* to pay to the cedent, or any other assignee; nevertheless now it is become a requisite solemnity; for in the case where there are several assignations to the same debt, the last assignation, being first intimate, will have the preference: but still this does not proceed from the intimation being an exclusive legal diligence, but only as a full accomplishment of the assignation.

A party cannot, without a legal intimation, be *in mala fide*. For his knowledge of such and such an assignation, translation, or the like, which ought formally to be intimate to him, even although he confessed he knew it, cannot prejudice him; seeing it was not made known to him by the law: for as the party's knowledge is not equivalent to a formal intimation, one cannot be bound or obliged to know what was not necessary for him to know.

Although intimation be by our proper custom a necessary solemnity, yet there are several ways of intimating assignations, which have the same force and effect as if done by an instrument under the hand of a Notary-public: For any legal diligence, such as an arrestment, a charge of horning, or a process upon the assignation, will be a sufficient intimation.

As also, intimation is not necessary to legal and judicial assignations, such as apprisings and adjudications; because they are passed and expedite publicly.

Marriage is likewise a legal assignation requiring no intimation; for thereby all the moveable debts of the wife are stated in the husband *jure mariti*, with-



out other intimation than the marriage. And by a decision, 2d December 1674, Craig *contra* the Laird of Wedderly, observed by Stair and Dirleton, *decis.* 195, intimation was not found necessary to a reposition by the assignee to the cedent, seeing the assignation was by a wife in her contract of marriage, which requires no intimation but the marriage; and, therefore, the husband's reposition to her needed no intimation.

Such rights as require possession to complete them, and are perfected by use of payment or possession, need no other intimation; as was found by a decision the 18th January 1628, L. Halkerton *contra* Falconer, observed by Durie; where, in the case of an heritable bond, the getting payment of some years annualrent, preferred the assignee to a former arrester, though there was no instrument of intimation.

Nevertheless it is to be observed, that an inhibition is not equivalent to an intimation, inhibitions being designed not so much for publication as for execution, and having only force against immoveables; as was found in the case, L. Westeraw *contra* Williamson and Carmichael, 14th March 1626, observed by Durie.

Where there are many *correi debendi*, it is safest to intimate to them all: for although intimation made to one will be sufficient, yet it cannot exclude payment made *bona fide* by another of the debtors, to whom no intimation was made.

Bills of exchange, and orders by merchants to make payment, need not be intimated; because in commerce we are governed by the law of nations.

Assignations to reversions, or bonds for granting reversions, renunciations of wadsets, or grants of redemption, which, by *act* 16, *parl* 1617, ought to be registered in the register of reversions, need no intimation, that register being designed not so much for conservation of these rights, where the principals are

not detained, as for publication thereof to all parties having interest, which is a sufficient intimation.

The instrument of intimation must bear the production of the assignation, otherwise it will be null; as also, it must bear the hour of the day in which the intimation was made: for if it should not express the hour, it will only prove to have been done on that day; and if there be a competition, and another instrument have the hour, that one will be preferred; and in case of both instruments having the hour, he who is first will be preferred: for, in that event, *prior tempore potior jure*. And by a decision, 30th January 1629, Davidson *contra* Balcanqual, observed by Durie, in a competition betwixt an assignee and arrester, where the hour was inserted both in the arrestment and in the instrument of intimation, the Lords preferred the arrester, in regard the arrestment preceded the intimation by the space of two hours; and Durie further adds,—“The reason specially was, because of the priority of the hour, which the Lords found in this case to be material: for, after that moment of arrestment, neither could the common debtor do any thing in prejudice thereof, neither could the intimation made any space thereafter affect the debt to the assignee, it being affected of before to the arrester; and the intimation and arrestment bearing their hours, it was found there need no other probation to prove their priority.”

My Lord Stair, in his *Institutions*, p. 378, speaking of this case, says,—“That this distance was two narrow, for the executor and witnesses may mistake the present hours;” and adds, that three hours were a fitter distance to prefer. By a decision, 5th January 1681, Chiesly *contra* Chiesly, observed by Stair, instruments of intimation of assignations were found not accustomed to be insert in protocol-books.

*Instrument of Intimation.*

“ AT, &c. compeared , as procurator for the within-designed *B*, whose power, &c. and with us passed, *respectivè et successivè*,\* to the personal presence of the within-designed *C* and *D*, principal and cautioner within named ; having and holding in his hands † the principal bond within narrated, made and granted by them to the within designed *E*, with the principal assignation thereto, granted by the said *E* within written, of the date, tenor, and contents within mentioned ; ‡ which bond and assignation above narrated, the said *A* delivered to me Notary-public,

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\* Or, if the debtors are not apprehended personally, say,—“ to the dwelling-houses of,” &c.

† If the instrument be on a paper apart, say,—“ a bond and obligation granted by the said *C* and *D* of the date , whereby, for the causes therein specified, they bound and obliged them,” &c. [*Here narrate the tenor of the bond ; and then add*], “ as the said bond, of the date foresaid, more fully bears ; as also, having, &c. an assignation made and granted by the said *B* to him, dated ,” &c. as in the assignation.

‡ If it be an instrument of intimation of a retrocession, add,—“ and in like manner having, &c. a retrocession made and granted by the said *J* to the said *K*, of the date ; whereby, for the causes therein specified, he retrocessed, restored, reponed, redisponed, and again assigned, to and in favour of the said *K*, his heirs, executors, or assignees, the foresaid principal sum of , with the sum of sterling foresaid of liquidate expenses, incurred through failzie ; together also with the haill bygone annualrents of the said principal sum resting-owing, and in time coming during the not-payment thereof ; with the said bond itself, haill heads and clauses thereof, letters of horning and caption, and haill other diligence following, or that might follow thereupon ; and surrogated and substituted him, and his foresaids, in his full right, vice, and place thereof, for ever ;

to be publicly read over and intimate; and which being accordingly done to the said *C* and *D*,\* personally present, the said *A*, as procurator foresaid, protested, that the said assignation was duly and legally intimated, and that they both might be liable in payment of the sums of money above assigned, and that they might not pretend ignorance of the said assignation, or intimation thereof, above written. And thereupon, and upon all and sundry the premises, &c. These things were done within the dwelling-houses of the said *C* and *D*, *respectivè et successivè*, betwixt the hours of," &c.

Besides intimations made on the transmission of moveable subjects, there are several other cases wherein intimations are made use of: for instruments under the hand of a Notary are sometimes necessary in bills of suspension, especially when these bills are

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as the said introcession, of the date foresaid, more fully bears."

If it be intimating a translation, say,—“likeas having, &c. a translation made and granted by the said *B* to *M*, of the date \_\_\_\_\_; whereby (for the causes therein specified) the said *B* assigned and transferred from him, his heirs, and all others his assignees, to and in favour of the said *M*, his heirs, executors, or assignees, the foresaid sum of \_\_\_\_\_ of principal, &c. [*as above*], assignation made of the same, and all action pursuit, and execution whatsoever competent, or that might be competent to him in the premises; and turned and transferred the haill right from him and his foresaids, to and in favour of the said *M*, and his foresaids, whom he thereby surrogates and substitutes in his full right, vice, and place,” &c.

\* If the parties are not personally apprehended, the intimation must be made at their dwelling-places, and the instrument must bear, that the Notary left a schedule for them at their respective dwelling-houses, because he could not apprehend them personally; for it is a general rule in all instruments, that where parties cannot be got personally, schedules ought to be left at their dwelling-houses.

to pass upon juratory caution : for by act of sederunt, 8th November 1682, the Lords ordain,—“ That with bills of suspension on juratory caution an instrument be given in, bearing the day whereon he was to present the bill ; and that he intimate the same to the charger, personally, or at his dwelling-house, if within the kingdom. And the said bill is to be given in with six days after the said day, or another intimation to be made ; and that the Ordinary, before reporting the bill, in time of session, or three Lords in time of vacance, cause publicly call the charger before the passing of the bill,” &c.\*

But no person incarcerated can be liberate by suspension, but upon sufficient caution : for the said act of sederunt enjoins,—“ That no charge to set at liberty be granted on juratory caution.”†

*Instrument of Intimation that a Bill of Suspension is to be offered on Juratory Caution.*

“ AT, &c. compeared *A*, as procurator for *B*, who, with us, passed to the personal presence of *C* ; and, as the Lords of Council and Session have, by an act of sederunt, ordained, made to him due and lawful intimation, that the said *B* was, upon the day of                      instant, to present to the said Lords a bill for a suspension upon juratory caution, of a charge given to him for payment-making to the said *C*, of the sum of                      , [*as in the copy of the charge*] ; and protested, that he might not pretend ignorance thereof. Whereupon the said *A*, as procurator foresaid, took instruments in the hands of me Notary-public. These things were done,” &c.

\* This provision in the act is now in desuetude ; of course, any intimation is unnecessary.

† Neither is this regulation of the act in observance, as bills of liberation, upon cause shown, are in use to be passed upon juratory caution, and even without caution or consignation.

Sists upon bills of suspension, or passed bills of suspension, are intimate to the charger or his doer; and unless that the suspender require a formal instrument, the Notary generally marks upon the bill thus.—“Edinburgh, 1st February 1792, intimated this bill, and deliverance thereon, to the within *C*, charger, personally, [*or*, to *D* his doer, personally]; *A* being procurator, *K* and *H* witnesses;” and the Notary signs his name. But a formal instrument will be to this effect.—

“AT, &c. the which day, *A*, as procurator for, and in name and behalf of *B*, passed with me Notary-public, and witnesses subscribing, to the personal presence of *C*, charger, [*or*, *D*, his agent and doer]; having, &c.\* a principal bill of suspension, given in and presented to the Lords of Council and Session, at the instance of the said *B*, beseeching their Lordships, for the reasons therein set forth, to suspend a charge given to him by the said *C*, for making payment of the sum of \_\_\_\_\_ of principal

\_\_\_\_\_ of penalty, and of the bygone annualrents of the said principal sum, contained in a bond granted by the said *B* to the said *C*, dated \_\_\_\_\_, registrar \_\_\_\_\_; and upon which bill of

suspension the following deliverance is wrote.—“Edinburgh, \_\_\_\_\_ day of \_\_\_\_\_ 1810.

To see and answer within fourteen days; meantime sists execution, and to be intimated. Which bill of suspension, and sist above narrated, the said *A* delivered to me, Notary-public, to be publicly read over and intimate: and which being accordingly done to the said *C*, personally present, the said *A*, procurator foresaid, protested, the said *C* might not

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\* “The within bill of suspension, and sist thereupon within written, which he delivered to me Notary-public, &c. when the instrument is on the back of the bill.”

pretend ignorance of the said bill of suspension, and assist thereon; and thereupon took instruments in the hands of me Notary-public. 'These things were done,' &c.\*

When any prisoner applies to the magistrates of a burgh for the benefit of the act of parliament 1696, made in favour of insolvent debtors,—*Imo*, The creditor at whose instance he was incarcerate, and those that shall arrest him in prison, are first cited personally by an officer of court, or by letters of supplement, if living without the bailies jurisdiction; or, if intimation be made to the creditors by a Notary and witnesses under form of instrument, that the prisoner is to apply for an aliment, and the benefit of the foresaid act, the same is sustained as a citation. *2do*, The prisoner then presents to the bailies the said execution of warning, or instruments of intimation, with a petition craving the benefit of the foresaid act; to which is subjoined a declaration, subscribed by the clerk of the tolbooth, testifying at whose instance the debtor is incarcerate or arrested, and for what sums; and at calling thereof in court, if any comparance be made for the creditors, they are allowed to see and object; and if no objection be proponed, then the prisoner is sent forth of prison; and upon his deponing, that he has no means of his own wherewith to aliment himself in prison, the bailies modify an aliment to him, not under three shillings Scots *per diem*: which modification must be intimate to the creditor, requiring him, either to aliment the prisoner at the foresaid modification, or to consent to his liberation forth of prison, within ten days after the date of the said intimation made by a Notary and witnesses, as effeirs. 'Then, after the ten days are

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\* A passed bill of suspension may be intimate the same way, *mutatis mutandis*.

freely elapsed, the prisoner produces another declaration, under the hand of the clerk of the tolbooth, testifying that he is neither alimented by his creditor, nor arrested at any other person's instance; and thereupon grants a disposition *omnium bonorum* in favour of his creditor; and then, and no otherwise, the bailies grant the prisoner the benefit of the fore-said act of parliament.

*Instrument of Intimation by a Prisoner to his Creditors, that he is to apply for the Benefit of the Act of Parliament 1696.*

" At , &c. compeared *A*, as procurator for and in name and behalf of *B*, present prisoner in the tolbooth of , and passed with me, and the witnesses subscribing, to the personal presence of *C*, *D*, and *E*, &c. and then the said *A* represented, that the said *B* lay incarcerate in the tolbooth of , in virtue of an act of warding following upon a registrar protest at the instance of the said *C*; and that he was neither able to pay the sum for which he lay incarcerate, nor aliment himself in prison; and that he was to apply for the benefit of the act of parliament in favour of insolvent debtors: therefore, the said *A*, procurator foresaid, made due and lawful intimation to the said *C*, creditor incarcerator, and the hail other persons above named, also creditors to the said *B*, to compear before the bailies of , in their ordinary court-place, upon the day of , at of the clock in the forenoon, to hear and see the said *B* depone, in terms of the said act of parliament. These things were so done, in the personal presence of the said hail forenamed person's creditors, places, dates, and year of God *respectivè* before mentioned, in presence of and witnesses specially called and required to the premises."



*Instrument of Intimation of the Modification of an Alim-  
ment of a Poor Prisoner to his Incarcerator.*

“ At, &c. compeared *A*, as procurator for *B*, present prisoner in the tolbooth of ; and passed to the personal presence of *C*, at whose instance the said *B* is incarcerate; and the said *L*. as procurator foresaid, made due and lawful intimation to the said *C*, that upon presenting a petition to the magistrates of the burgh of , by *B*, setting forth, he was incarcerate in their tolbooth at the instance of the said *C*, and that he was not able to aliment or maintain himself in prison; and, therefore, craving they would take his oath anent his insufficiency to aliment himself in prison, and modify him an aliment, in the terms of the 32d act of 6th sess. of K. William's 1st parl. the said magistrates, had upon the day of instant, taken the said *B* his oath, that he was not able to aliment himself in prison; and that they having also considered the said petition, deposition of the said *B*, with the assignation made by him in favour of the said *C*, they allowed and modified to him the sum of of aliment *per diem*; and, therefore, the said *A*, as procurator foresaid, did intimate the foresaid petition, deposition, and deliverance on the said petition, modifying the foresaid aliment to the said *B*, and protested, that he should provide, or give security for the said sum, to be paid to the said *B* *per diem*, during his imprisonment, within ten days next after the intimation; with certification, if he fail to do, that the said magistrates will liberate the said *B* out of their prison, in terms of the foresaid act of parliament. Which petition, deposition, and deliverance foresaid, the said *A*, as procurator foresaid, produced and shewed to the said *C*, and took instruments on the premises in the hands of me Notary-public. These things were done,” &c.

## SECTION III.

*Of Instruments of Protestation and others relating to matters of Commerce and Business.*

THESE instruments are of various kinds, and differ as the circumstances of the case vary; and as they cannot be circumscribed, I have here set down such as most commonly occur; and from them the Notary may be enabled to frame such other instruments as may happen to come in his way, whatever the case may be. The instruments here given, are,—

Instrument of protestation of bills.

a shipmaster against the freighter.

against wind and weather.

of protest, the buyer of victual against the seller.

a master against his apprentice.

upon a bond of presentation.

upon forcing payment of a controverted debt.

requiring an act to depone.

upon deforcement of a messenger.

I. As to the *first*, my Lord Stair, in his *Institutes*, p. 104, informs us, that the ordinary way of *mutuum* amongst merchants is by bills of exchange, or letters of credit; which have several specialities that arise from the nature of the acts, and from customs, especially those common customs of merchants observed in cities of greatest trade in the neighbouring nations. The nature and tenor of these bills of exchange is, that the drawer of the bill orders such a merchant, his correspondent, to pay the sum contained in the

bill, upon sight, or at such a certain time, or at such usance, and that for value received; wherein there is implied a mandate to the correspondent, and an obligation upon the drawer of the bill to make that mandate effectual; wherein *mutuum* is implied. If the value received by him be numerate money, or for any other cause, such as delivery of ware; and there is in it *fictio brevis manus*, as if the ware was sold to the drawer of the bill, and the sum in the bill was the price received, and delivered again in loan,—there useth, in case of miscarriage, two or three bills to be drawn for the same sum, which do bear to be *first*, *second*, and *third* bill; and the payment of any one satisfies all. The fixed form by custom of making use of these bills, is by presenting them to him upon whom they are drawn; and if he accept the bill, he writes thereupon *accepts*, and signs it; which if it be simple, he becomes liable in the terms, and at the time mentioned in the bill. But sometimes the acceptor doth qualify his acceptance; which the creditor by the bill may refuse, and require either simple acceptance, or may protest for non-acceptance. But if he suffer the acceptance to be qualified, it imports his consent, and he cannot protest for non-acceptance; as if the acceptance be to a longer day than that which is contained in the bill; or if it bear acceptance *if provisions come betwixt and the day*, or *if ware or bills in hand do raise the sum*. At or after the day, the bill is again presented, and if payment be not then made, the creditor in the bill protests for not-payment; and both these protestations must be by instrument of a Notary, either for non-acceptance or not-payment; which instruments, with the bill, make sufficient probation, both against the drawer of the bill, and against him upon whom it was drawn; and neither witnesses nor the oath of the party will be sufficient to supply the protest, so that the instrument or protest is not only a proof, but a solemnity requisite. These protests may be taken against him

upon whom they were drawn, either personally, or at his dwelling-house; which was sustained, though, before presenting of the bill, the party upon whom it was drawn was dead, 8th July 1664, Kennedy *contra* Hutchison.

Protesting in general is a profitable remedy, whereby we commonly preserve our right entire; and in bills of exchange it is an essential piece of diligence, that cannot be dispensed with, or supplied by witnesses or oath of party, or by any other act. Bills are either protested for non-acceptance, or for non-payment, or the like. The design whereof is only to signify to the drawer, that the possessor of the bill did his duty in duly requiring acceptance or payment; but that the person drawn upon was either unwilling, or not to be found, or insolvent; and thereby to make the drawer liable: for there is always action competent to the creditor in the bill against the acceptor, whether it be protested or not, though without that formality he cannot have summary diligence.

The form of protesting bills varies in different places. In France, it must be done by two Notaries, or one Notary and two witnesses, or by a macer or serjeant with two witnesses. At Venice, bills are protested only by the servants of the college of commerce, and then entered in a particular register, patent to all merchants: in fairs, or markets, a Notary, or some other authorized person, does the business of protesting and registrating these protests. In England, the person to whom the bill is payable, his servant, agent, or assignee, causeth it to be protested by a Notary-public; and, in default of such Notary, by any other substantial person of the place, in the presence of two or more witnesses, betwixt sun and sun, or sun-rising and setting, when shops are generally open, or the courts of justice sitting. But, with us, all protests are only made by taking instruments in the hands of a common Notary against the party,

either personally, or at his dwelling-house, or lodging where he lives, or where he died; unless a bill is to be protested for not payment; in which case it sufficeth to protest at the place of payment mentioned in the bill, though the acceptor reside not there.

Since the commerce of this country began to extend itself, transactions upon bills of exchange, properly so called, have of consequence become more numerous, and their effect more important, than when our trade was confined within more narrow limits. This may be the reason that, in former editions of this book, the forms of protesting bills have been so shortly treated of; and, in order to remedy this defect, it is proposed to give a brief account of the nature of bills, both inland and foreign; which will the more naturally lead us to lay down the necessary forms of negotiating and protesting them, in the different cases which may occur, of drawing, accepting, non-accepting, or indorsing. And it becomes the more necessary to give the reader the information proposed, as, within these very few years,\* a most material alteration has been made upon the law relating to bills in this country.

A bill of exchange, in its proper sense, is a security invented by merchants, in different countries, for the more easy remittance of money from the one to the other; which has since spread itself into almost all pecuniary transactions. It is a deed or obligation, which, on the account of commerce, is peculiarly favoured by law, and may be defined a mandate or request from one person to another, desiring him to pay a sum therein named to a third person on his account, either upon presenting of the bill, or within a time specified in the bill. This mode of conveyance or remittance of money from one place to another,

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\* Act 12mo Geo. III.

seems to have been established in Europe towards the end of the 14th. century, when the Jews and Lombards were banished from France and England, on account of their usury and vices, and who fell upon this scheme, to draw their effects after them into those countries where they had taken refuge. The invention, wherever or whence it sprung, has been of infinite benefit to the commercial world, and opened an intercourse between distant nations, equally advantageous to the merchant and to the traveller. In common speech, such a bill is frequently called a *draft*; but a bill of exchange is the more legal as well as mercantile expression. It is called a bill of exchange, because the money is given in exchange for the bill, and the money paid is in comparison to that to be received in the country where it is payable. The person who writes this letter, or bill, is styled the *drawer*; and he to whom it is written, the *drawee*; and the third person, to whom it is made payable, the *payee*, or *porteur*. Thus, it is evident, the *porteur* or creditor in the bill has a double security for his money; he has the *drawee*, and failing his accepting or paying, he goes back upon the *drawer*; which, in the mercantile style, is called *recourse*. But the *porteur* has not only a right to receive payment, but a right to assign his property in the bill, which is termed *indorsation*; and this, whether the bill bear payment to be made to him or order, or not. The person making this assignment is called the *indorser*; the assignee is called the *indorsee*, who comes in the full right and place of the *indorser*, and as such may receive payment or indorse the bill, so that it may pass to another, and so on *in infinitum*; and as a ball of snow is increased by rolling, so, by passing from hand to hand, the security of payment of the bill is more insured to the possessor, as not only the *drawer*, but every *indorser*, is jointly and severally liable to him in payment and recourse, unless in the case where the *indorsation* bears *without recourse*.

To preserve his security and recourse against all concerned, the creditor in possession of the bill must take such necessary steps as are prescribed by law, or the practice of merchants; the last of which is of great weight in matters of trade and commerce. This procedure is called negotiating the bill; and if the bill be not duly negotiated, the creditor loses his recourse. An example of this will be sufficient.—*A* at London draws a bill for 100*l.* upon his correspondent *B* in Edinburgh, payable ten days after date to *C* or order, for value received; *C* indorses the bill to *D*, who presents the bill to *B* for acceptance, which is refused. The bill is then given to a Notary-public, to be protested for non-acceptance, who must go to the house or personal presence of the drawee *B*, or, in case he has no residence in town, or cannot be found out, to the market-cross: some also go to the Exchange coffee-house, and there protest the bill. If *B* can be found, and if he give a reason why he will not accept, such reason ought to be inserted in the instrument; which, in the case alluded to, may run thus.—[Observe, a full and *verbatim* copy of the bill and its indorsations is prefixed].

“ AT Edinburgh, the                      day of  
 years. Which day the principal bill, whereof  
 what is prefixed is a true copy, was by me No-  
 tary-public, at the request of *D*, holder thereof,  
 presented to the said *B* for acceptance; who  
 answered, that he would not accept the same,  
 as he had no value in his hands: whereupon I  
 protested the said bill, at the instance of the said  
*D*, indorsee thereto, against the said *B*, for non-  
 acceptance, and against the drawer and indorser,  
 jointly and severally, for recourse, exchange, re-  
 exchange, costs, interest, and expenses, as ac-  
 cords. Whereupon instruments were taken in  
 my hands, in presence of                      and                      ,

witnesses specially called and required to the premises.

*Premissa attestor.*

J. B. N. P."

If the drawee have any other reason for non-acceptance than not having value in his hands, let that be marked in the instrument; or if, as said above, he cannot be found, the instrument must bear so; and that the Notary went to the market-cross and Exchange coffee-house of Edinburgh, and, upon inquiry, could not find him; therefore, protest, &c. This protest taken, and the dishonour intimated by the holder of the bill to the drawer or last indorser, within fourteen days after the date of the protest, saves recourse to the creditor against the drawer and indorsers; and he may put his protest in the register, and charge them with horning for payment jointly and severally.

It sometimes happens, that a friend of the drawer's, or of some of the indorsers, hearing of the refusal of acceptance, offers to pay the bill, for the honour of his correspondent, under protest and act of honour; or, perhaps, the drawee himself, when he has no value of the drawer's in his hands, allows a protest to go for non-acceptance, after which he accepts it under protest, for the honour of the drawer; which saves recourse against the drawer. In this case, the instrument of protest runs thus —

[The Bill Prefixed.]

" AT Edinburgh, &c. which day the principal bill above copied was by me Notary-public, presented to the said *B* for acceptance; who answered, that he would not accept thereof, having no value in his hands: whereupon I protested, &c (as in the former instrument) as accords. And thereafter appeared *E*, who offered to pay the said bill for the honour of the said *A* the





practice of merchants, as a favour to the creditor. If the last day of grace happen to fall on a Sunday or holiday, the bill must be protested on the Saturday, or day preceding.

Promissory-notes are, by the late statute 20th Geo. III, chap. 72, entitled to the same privileges as bills. Bills, foreign and inland, are put upon the same footing; and their duration, which, from the decisions of the court, seemed undetermined, is limited. But, for more convenience to our readers, that part of the statute relating to bills and promissory-notes is subjoined.

It is enacted,—“That from and after the 15th day of May 1772, the same diligence and execution shall be competent, and shall proceed upon promissory-notes, whether holograph or not, as is provided to pass upon bills of exchange and inland-bills, by the law of Scotland; and that promissory-notes shall bear interest as bills, and shall pass by indorsation; and that indorsees of promissory-notes shall have the same privileges as indorsees of bills in all points.”

It is enacted,—“That no bill of exchange, or inland-bill, or promissory-note, executed after the 15th day of May 1772, shall be of force, or effectual to produce any diligence or action, in that part of Great Britain called Scotland, unless such diligence shall be raised and executed, or action commenced thereon, within the space of six years from and after the terms at which the sums, in the said bills or notes, became exigible.”

It is enacted,—“That no bill of exchange, or inland-bill, or promissory-note, which has been, or shall be granted before the said 15th day of May 1772, shall be of force, or effectual to produce any diligence or action, unless such diligence has been or shall be raised, or action has or shall be commenced thereon, before the expiration of six years from and after the said 15th of May 1772.

“Providing always, that no notes, commonly call-

ed bank-notes, or post-bills, issued, or to be issued, by any bank or banking company, and which contain an obligation of payment to the bearer, and are circulated as money, shall be comprehended under the foresaid limitation or prescription; and that it shall and may be lawful and competent, at any time after the expiration of the said six years, in either of the cases before mentioned, to prove the debts contained in the said bills and promissory-notes, and that the same are resting and owing, by the oaths or writs of the debtor."

It is enacted,—“That the years of the minority of the creditors in such notes or bills, shall not be computed in the said six years.”

It is enacted,—“That all inland-bills and promissory-notes shall be protested in like manner as foreign bills, before the expiration of the three days of grace, otherwise there shall be no recourse against the drawers or indorsers of such inland-bills, or against the indorsers of such promissory-notes; and it shall be sufficient to preserve the said recourse, if notice is given of the dishonour within fourteen days after the protest is taken, without prejudice to the notification of the dishonour of foreign bills, to be made within such time as is required by the usage and custom of merchants.

It is enacted,—“That from and after the said 15th day of May 1772, summary execution, by horning, or other diligence, shall pass upon bills, whether foreign or inland, and whether accepted, or protested for non-acceptance, and upon all promissory-notes duly negotiated, not only against the accepters of such bills, or granters of such notes, but also against the drawers of such bills, and the whole indorsers of the said bills and notes, jointly and severally, excepting where the indorsation is qualified to be without recourse, saving and reserving to the drawers or indorsers their respective claims of recourse against each

other, and all defences against the same, according to law."

It is enacted,—“ That from and after the said 15th day of May 1772, summary execution, by horning, or other diligence, shall be competent to the indorsee of a bill, although the protest is not in the name of the indorsee craving the diligence ; and although the bill is not re-conveyed to him by indorsation, if he produces a receipt for the value by act of honour, or a missive-letter from the protesting indorsee, mentioning the dishonour, agreeable to the practice of merchants in returned bills.”

It is enacted,—“ That the present act shall continue, and be in force, for seven years, from the said 15th day of May 1772, and to the end of the then next session of parliament, and no longer.” Which act is made perpetual by 23 Geo. III, chap. 18.

II. When shipmasters let out and freight their ships to merchants, for transporting merchandise to ports beyond seas, or coastwise from one port to another, they are bound to lie and remain a certain number of work-weather lie-days at the loading-port, for taking in the freighters goods and merchandise, and the agreed number of the said days at the unloading-port, for livering the outward cargo, and loading and taking in the inward ; and if the merchants have not their goods ready to be put on board, and thereby detain the ship and crew beyond the agreed time, the master protests against the freighters for demurrage, and that they be liable to him for the sums of money stipulate by the charter-party, to be paid for each day he shall be detained over the lie-days agreed upon, and takes instruments in the hands of a Notary thereupon, as follows.—

*Instrument by the Master of a Ship against the Freighters, for the Penalty stipulate by the Charter-Party.*

“ AT and within the port and harbour of \_\_\_\_\_, aboard the good ship called \_\_\_\_\_, of which *A*, shipmaster in \_\_\_\_\_, is present master, the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and ten years, and of his Majesty's reign the fiftieth year : The which day, in presence of me Notary-public, and witnesses subscribing, compeared personally the said *A*, shipmaster foresaid ; having a charter-party, of the date the \_\_\_\_\_ day of \_\_\_\_\_ last bypast, betwixt the said *A*, and *B*, merchant in \_\_\_\_\_ ; by which charter-party, exhibited and delivered to me the said Notary-public by the said shipmaster, the said *A*, for the sums of money, and other prestations therein and after mentioned, did set and to freight let the said ship called the \_\_\_\_\_, of the burden of \_\_\_\_\_ tons, or thereby, to the said *B*, and bound and obliged him, his heirs, and others therein mentioned, to have his said ship in readiness, in good order, and sufficient condition, wind and water tight, with float-boat, cables, anchors, masts, sails, tows, oars, and all other necessary apparelling, with a crew of skilful and able-bodied seamen, and victuals sufficient for plying the voyage under written, and that within the said port and harbour of \_\_\_\_\_, betwixt and the \_\_\_\_\_ day of \_\_\_\_\_ then next, and now last bypast, and there to remain for the space of \_\_\_\_\_ work-weather lie-days, and in that time to receive and take on board the said ship her full loading of corns, or such other goods as the said *B*, or any others in his name, should put on board ; and immediately after the said ship should be fully load, (wind and weather serving), to sail from the said port and harbour of \_\_\_\_\_, and to transport the cargo aforesaid directly to the port and

harbour of \_\_\_\_\_ in \_\_\_\_\_, and there to lie the space of \_\_\_\_\_ work-weather lie-days, for unloading the said outward cargo, and receiving and taking in a loading of \_\_\_\_\_, and thereafter to sail with his said ship from the said port and harbour of \_\_\_\_\_, and transport the said inward cargo to the port and harbour of \_\_\_\_\_, and there to lie and remain for the space of \_\_\_\_\_ work-weather lie-days, for livering and unloading the said inward cargo; and the said *A* bound and obliged him, his heirs and successors, that he should do his utmost and exactest diligence of sailing and transporting his said ship and cargo, and in loading and unloading the same, at the several ports above written; and that he should not suffer any part thereof to be spoiled, damnified, embezzled, or otherwise away taken, by himself or crew, or by and through the fault, neglect, or negligence of himself, or his sailors and crew; and to load and unload the outward and inward cargoes above mentioned, and to deliver the same to the said *B*, or any having his orders and commission, at the several ports above expressed, within the space of \_\_\_\_\_ days after the arrival of the ship, in good order and condition, sea-hazard excepted allenarly; for the which causes, the said *B* bound and obliged him, his heirs, executors, and successors, to make good and thankful payment to the said *A*, his heirs, executors, or assignees, of the sum of \_\_\_\_\_, in part payment of his freight, within the space of \_\_\_\_\_ days after unloading of the said cargo of \_\_\_\_\_, at the said port and harbour of \_\_\_\_\_; and further, to make payment to the said *A*, and his foresaids, of the sum of \_\_\_\_\_, in full and complete payment of freight for outward and inward cargoes, and that within \_\_\_\_\_ days after the arrival of the said ship with the inward cargo of \_\_\_\_\_ at the said port and harbour of \_\_\_\_\_, without longer delay, with the sum of \_\_\_\_\_ money foresaid of liquidate

expenses for each term's failzie, and annualrent of the said haill freight from the respective terms of payment above written until payment of the same; and further, to pay to the said *A*, the sum of

, in name of caplagan, with pewage, rowage, and petty pilotage, and all other port-duties, conform to the custom of the sea: attour, the said *B* bound and obliged him, and his foresaids, to pay to the said *A*, and his foresaids, the sum of

money foresaid for each day he should be detained through his default, at the respective ports above written, attour the lie-days above expressed: and both the said parties bound and obliged them, and their foresaids, to observe, fulfil, and implement their several parts of the premises *hinc inde* to others, and the party-failzier to pay to the party-observer, or willing to observe his part thereof, the sum of

, by and attour performance; as the said charter-party, of the date foresaid, more fully bears. After public reading of which charter-party, in presence of the witnesses after named, the said *A* held forth and represented, that, in terms and implement of the charter-party above recited, he, with his ship and crew, did arrive in the said port and harbour of

upon the day of current, which he notified to the said *B*, [or *C*, his factor]; and that he was ready to receive and take on board the said loading of; but the said loading not being put on board, albeit the lie-days above mentioned be run out, therefore, the said *A* protested against the said *B* for breach of charter-party, and that he might not only be liable to him for the sum of

for each day he shall hereafter be detained, but also for the penalty above expressed, incurred by him through failzie, and of all other cost, skaith, damage, and expenses, he, his ship, or crew, shall happen to sustain by and through his being detained longer than the lie-days above specified. Whereupon, and upon all and sundry the premises, the

said *A* asked and took instruments in the hands of me the said Notary-public subscribing. These things were done betwixt the hours of                      and before [*or after*] noon, place, day, month, year of God, and of his Majesty's reign *respectivè* above written, before and in presence of *D, E, F,* and *G,* witnesses to the haill premises specially called and required," &c.

III. Masters of ships do not only protest sometimes against their freighters, but likewise against wind and weather: For if a violent storm shall happen to a ship and crew when at sea, and the master and seamen, for saving the ship, their own lives, and a part of the cargo, throw overboard some of the goods, then the master usually protests against the storm, wind, and weather, at the mainmast; as also, if a storm happen, and the water thereby get into the hold, or damnify the goods, the master, in like manner, protests at the mainmast against the storm, wind, and weather, and takes some of the crew witnesses; and in either of these cases, as soon as he comes to any port or station, he comes ashore, and brings his witnesses along with him before some magistrate or justice of the peace, and a Notary-public, and causes the witnesses depone upon the fact; and the deponing witnesses, together with the judge, do sign this instrument along with the Notary and his witnesses.

*Instrument against Wind and Weather.*

" AT                      , &c. compeared *A*, master of the good ship called the                      , and with us passed to the personal presence of *B*, provost of the burgh of                      , and one of his Majesty's justices of the peace within the shire [*or county*] of                      , and there held forth and represented, that whereas the said *A*, as master of the said ship, had sailed with



her in good order and condition from the port of \_\_\_\_\_, for the port of \_\_\_\_\_, and in his passage, upon the \_\_\_\_\_ day of \_\_\_\_\_ last bypast, about the hour of \_\_\_\_\_, in the latitude of \_\_\_\_\_ degrees and \_\_\_\_\_ minutes, there arose and happened a prodigious storm of wind \* and rain, which continued for the space of \_\_\_\_\_; and the ship being in imminent hazard, and several times near overset, he, the said master, having advised with the mate and crew, found and concluded there was no way or means, in human probability, could be fallen upon to save the ship, men's lives, or cargo, but by lightening the ship, and throwing over some of the heavy goods; and accordingly, he, the said master, mate, and crew, were necessitate, to prevent shipwreck, to throw over the following goods, viz. [*Here the goods, and their several marks whereby they are distinguished, are mentioned*]; whereupon, in presence of the mate and crew, he protested at the mainmast against the wind and storm; and that it was the greatest hazard and necessity made him lighten the ship, and throw over

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\* If the instrument be taken against wind and weather, when by reason of the storm water beats into the hold, and damnifies the goods, say,—“blowing from \_\_\_\_\_ to \_\_\_\_\_ and by \_\_\_\_\_ which had driven the ship upon the shore along the coast from \_\_\_\_\_ to \_\_\_\_\_, had he not, for preservation of the men's lives, ship, and cargo, carried as much sail as the storm of wind would possibly allow, to clear the leeward shore, and get into an harbour, which laid the ship so along, and the sea making a passage over her, made him the said master afraid of damage in the hold; whereupon, in presence of the mate and crew, he protested at the mainmast against the sea and storm, of wind aforesaid, about \_\_\_\_\_ of the clock that noon; after which he, with no small difficulty, got into the harbour of \_\_\_\_\_, where she now lies; and the said A, shipmaster foresaid, for verifying what was above represented, adduced and presented,” &c. as in the above instrument.

the goods above mentioned ; and that, therefore, he and his crew might be free of the damage and loss therethrough sustained, in regard it could neither be imputed to any defect or fault in the ship or mariners, but allenarly to the storm ; and, for verifying what was above represented, adduced and presented *C, D,* and *E,* three of the mariners then on board the ship with him, and desired and craved that the said *B* might call the witnesses by their names, and take their oaths and depositions upon the facts above represented. And the said *B* having accordingly called the said *C, D,* and *E,* severally, and they being all solemnly sworn and examined anent the facts above represented, they deponed, that the facts above related by the said *A,* shipmaster aforesaid, were real, just, and true ; and that was the truth as they should answer to God. Whereupon, \* the said *A* of new again protested against the said storm ; and that he and his crew might be free of the damage and loss of the goods thrown overboard, as said is, in regard the lightening of the ship, by throwing over the same, was absolutely necessary for preventing shipwreck, and saving the men's lives and remainder of the cargo ; and thereupon took instruments in the hands of me Notary-public subscribing. 'These things were done," &c.

IV. When an heritor sells any quantity of victual, there is a contract signed by him and the buyer, by

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\* If it be against the storm when water beats into the hold, and damnifies the goods, say.—“ the said *A* of new again protested against the storm and wind, and that if any damage has happened by water getting into the hold, he and his crew might be free thereof, the same not being occasioned by any insufficiency of the ship, or fault or neglect of the master and crew, but merely by the violence of the storm ; and thereupon took instruments,” &c. as above.

which the heritor stands bound to deliver the quantity sold, by a certain day, at the port or certain place agreed upon, to the buyer, or any having his order, and to pay a sum agreed upon for each undelivered boll; and, on the other hand, the buyer becomes bound to pay the price at the time agreed upon, with annualrent after the term of payment, and that under a penalty; and if the seller fail to deliver all or any part of the victual at the time limited, then the buyer protests against him for the penalty due for each undelivered boll, and all other damages; as in the following example.—

*Instrument the Buyer of Victual against the Seller.*

“ AT the burgh of \_\_\_\_\_, &c. compeared personally *A*, \* and with us passed to the pier of the said burgh of \_\_\_\_\_, † where the quantity of victual under written was deliverable in manner after specified; having, &c. a contract of victual, of the date the \_\_\_\_\_ day of \_\_\_\_\_ last bypast, made, passed, and perfected betwixt the said *A* and *B*, on the one and other parts; whereby the said *B*, (for the causes therein specified), sold and disposed to the said *A*, his heirs, executors, or assignees, all and hail the number and quantity of \_\_\_\_\_ bolls well-dight bear, and \_\_\_\_\_ bolls good and sufficient oat-meal, merchant-stuff and market-ware, of the growth of the lands of \_\_\_\_\_, crop and year of God \_\_\_\_\_; which number and quantity of \_\_\_\_\_ bolls of bear, and \_\_\_\_\_ bolls of meal, of the quality, growth, and crop foresaid, the said *B* bound and obliged him, his heirs, executors, and successors, to deliver to the said *A*,

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\* Or,—“ *C*, as procurator for, and having power and commission from *A*, to receive the quantity of victual after mentioned.”

† Or,—“ the granaries and barns of *E*.”

and his foresaids, or any person having his or their order and commission, upon the pier of the said burgh of , \* betwixt the and days of then next, now current; and that as follows, viz. the bear, with the met and measure of the said burgh, and the meal at eight stone weight *per* boll; and the said *B*, in case of not delivery of the victual above written, within the time limited, thereby bound and obliged him, and his foresaids, to pay to the said *A*, and his foresaids, the sum of sterling for each undelivered boll of the said bear, and money foresaid for each undelivered boll of the meal above mentioned; as the said contract, of the date foresaid, more fully bears. After public reading of which contract above written, by me the said Notary-public, in presence of the witnesses after named, the said *A* † represented, that, notwithstanding of the contract above mentioned, and that he had given notice to the said *B*, that he was ready, willing, and attending, to receive from him the quantity of victual above mentioned, and that this was the last day of the time limited; yet, nevertheless, that the said *B* had failed to deliver the haill quantity above mentioned, [*or* bolls bear, and bolls meal]. And, therefore, the said *A* ‡ protested against the said *B* for breach of contract, and that he might be liable for the said sum of for each undelivered boll of the bear, and money foresaid for each undelivered boll of the meal above mentioned, and for the penalty of the contract, and for all other cost, skaith, and damage, suffered or to be suffered through the said *B* his not implementing the said contract; and thereupon took instruments, &c. These things were done upon

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\* Or,—“ within the granaries and barns of the said *B*.”

† Or,—“ *C*, as procurator, and in name foresaid.”

‡ Or,—“ *C*, as procurator foresaid.”

the pier of the said burgh,\* betwixt the hours of  
and before [or after] noon, place, day,"  
&c.

V. Instruments are likewise taken by masters against their apprentices and their cautioners, for the breach of one or other of the parts of the indenture, and for the penalty, and other damages, the master may sustain by the said failure.

*Instrument a Master against his Apprentice for Breach of Indenture.*

"AT, &c. compeared personally *A*, within his own dwelling-house in , having, &c. letters of indenture, made and passed betwixt him on the one part, and *B*, lawful son of *C* of , with consent of the said *C*, his said father, and the said *C*, as cautioner and taken burden for his said son, on the other part, dated at , the day of years; whereby (for the causes therein specified) the said *B* became apprentice and servant to the said *A* in his art, calling, and employment of , for all the days, space, and years of , full and complete years next and immediately following after his entry, which is thereby declared to have been and begun, &c. [*Here take in the obligatory part of the indenture upon the apprentice and cautioner; then say*], as the said indentures more fully bear; which indentures above written, the said *A* did exhibit, present, and deliver to me the said Notary-public, to be openly read in presence of the witnesses under written, and which accordingly I did. After reading and publishing whereof, the said *A* did represent, in presence of me and the said witnesses,

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\* Or,—“ within the granaries or barns of the said *B*.”

that the said *B* had most wilfully faizied and contravened all his parts and prestations of the said indentures in so far as [*Here insert the particular breaches ; and then say*], and, therefore, the said *A* protested, that the said *B*, and *C*, his father, and cautioner above written, may not only be liable to him in the apprentice-fee, and liquidate penalty contained in the said indentures, but also for all cost, skaith, damage, and expenses he may anywise sustain or incur through the said *B* his breaking his indentures, in manner particularly above expressed. Whereupon," &c.

VI. If a messenger shall, by virtue of letters of caption, apprehend a debtor, and thereafter give him some time to pay the debt, upon some responsal person granting bond to present him at a fixed day, or otherwise to pay the debt ; and if, at the fixed day the debtor compear not, then the messenger protests the bond against him and his cautioner ; and thereupon the cautioner becomes bound and liable for the debt, and may be forced to pay by letters of horning upon the bond of presentation and instrument.

*Instrument upon a Bond of Presentation.*

" At                   , &c. compeared personally *A*, messenger, to whom the bond of presentation after mentioned is made and granted, and with us passed to the house of *B*, the place of presentation under written, having, &c.\* a bond of presentation made and granted by *C*, as principal, and for and with him *D*,

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\* " The bond of presentation within written ; which bond he delivered to me Notary-public, to be read and published to the witnesses present ; which I did : and after reading," &c. if the instrument is on the back of the bond.

as cautioner, sovery, and full debtor for him, of the date the       day of       years; whereby (for the causes therein specified) the said *C* and *D*, principal and cautioner foresaid, bound and obliged them, conjunctly and severally, their heirs, executors, and successors, either to enter and present the said *C* prisoner to the said *A*, messenger, or any other messenger having the letters of caption therein contained, and that within the dwelling-house of the said *B*, within the burgh of       , upon this day, betwixt the hours of       and       upon the town-clock of the said burgh, the afternoon of the said day; and that without any expedie suspension, passed bill, or sist of execution, protection, or any other dilator, stop, or impediment whatsoever, which might anywise stop, hinder, or impede the putting to further execution, by incarceration or otherwise, the letters of caption therein mentioned, raised at the instance of *E* against the said *C*, for not payment-making to him of the sum of       sterling money of principal,       of liquidate expenses, and certain bygone annualrents of the said principal sum resting unpaid, specified and contained in a bond and obligation made and granted by the said *C* to the said *E*, dated       , registrate in the books of       , the       day of       , and in the letters of horning and execution thereof following upon the same; or otherwise, in case they should happen to fail in all or in any part of the premises, then and in that case they bound and obliged them, conjunctly and severally, and their foresaids, thankfully to content, pay, and deliver to the said *E*, his heirs, executors, or assignees, all and haill the foresaid sum of       money foresaid of principal, with the sum of       money foresaid of necessary expenses, expended by him in doing diligence upon the said bond, together with the sum of       money foresaid of bygone annualrents of the said principal sum resting at the date of the said bond of presentation; extending

the said principal sum, bygone annualrents, and necessary expenses above mentioned, at the date foresaid, to the sum of           ; and that betwixt and the term of           next to come, without longer delay; with the sum of           money foresaid of liquidate expenses in case of failzie; together also with the due and ordinary annualrent of the said hail principal sum, accumulate as said is, from the date of the said bond of presentation to the said term of payment, and yearly, termly, and proportionally, during the not-payment of the same; as the said bond of presentation more fully bears. Which bond of presentation above narrated, the said *A*, messenger foresaid, and as procurator for the said *E*, (whose power of procuratory was clearly known to, and understood by me the said Notary-public), exhibited, presented, and delivered to me the said Notary-public, to be openly read and published in presence of the witnesses under written; all which accordingly I did. After the reading and publishing of the said bond of presentation, and attending and waiting at the place above written till after the said hour of           in the afternoon upon the town-clock of the said burgh, the day foresaid, the said *A*, messenger, and procurator foresaid, in regard the said *C* and *D* had failzied to present the said *C*, this day, hour, and place, in the terms and to the effect mentioned in the said bond of presentation, protested, that they may be liable, conjunctly and severally, to the said *E*, and his foresaids, for payment of the said accumulate sum of           , annualrents thereof, and penalty above written (if incurred), at the said term of           next to come. Whereupon," &c.

VII. When decreets are obtained against any person, in processes where there is either no comparance made, or at least no effectual pleading for them; and yet, when they offer bills of suspension of the charge on such decreets, the same are some-



times refused ; the debtor, in these cases, behoves either to pay or go to prison ; and in these and the like cases, where people are compelled by force of diligence to pay debts they think not just or not due, there is no remedy but to pay under protestation, that it is not voluntary, but by force of diligence ; and that the payment shall infer no homologation, but that it may be entire for the payer to reduce the decret, &c. charged on.

*Instrument by a Debtor against a Creditor, forcing Payment of a Controverted Debt.*

“ AT \_\_\_\_\_, &c. compeared personally *A*, and with us passed to the personal presence of *B*, and there represented and declared, that albeit the said *B* had obtained a decret and sentence at his instance against him before the Lords of Council and Session, [*or sheriff of* \_\_\_\_\_], whereby he was, for the causes therein specified, decerned and ordained, &c. [*Here take in the decerniture of the decret ; and then say*], upon which decret the said *B* having raised horning, and by virtue thereof caused charge the said *A*, he, for avoiding the danger thereof, offered a bill of suspension of the said charge before the Lord \_\_\_\_\_, Ordinary on the bills for the time, which his Lordship thought fit to refuse ; yet nevertheless, and notwithstanding thereof, the said *A* declared, that he was convinced in his conscience that the said decret was unjust, and neither founded upon law nor justice, and that he was wrongously compelled to pay the sums therein contained by mere force of diligence, to shun imprisonment ; and, therefore, he the said *A* protested, that his paying the sums contained in the said decret shall nowise be interpreted to be any homologation or approbation of the same, or of the diligence following thereupon ; but that it may be liesome and lawful

to him to quarrel and reduce the same upon any competent grounds in law, and to insist for, and recover repetition of the said sum, wrongously extorted from him *vi et metu carceris*, in manner above mentioned, as accords of the law. Whereupon," &c.

VIII. A party in a process, to whose oath an allegation, or other point in dispute is referred, is sometimes obliged to protest against the other party to furnish him an act for his deponing, in terms of the *act 10, parl. 1686*; which is done in manner following.

*Instrument requiring an Act to depone in a Process.*

"AT, &c. compeared *A*, and passed with me Notary-public, &c. to the personal presence of *B*, advocate and procurator [*or agent and doer*] for *C*; and desired and required the said *B*, conform to the *10th act, parl. 1, sess. 2, Ja. VII*, to furnish him the said *A* with an act to depone in the cause pursued at the instance of the said *C* against him, the libel being referred to his oath, and the day of \_\_\_\_\_ assigned to him for that effect; which the said *B* refused to do; wherefore the said *A* protested, that he might be dismissed and liberate from deponing therein, in respect he had made the foresaid requisition before any circumduction, and after the term assigned him to compear, in order to depone in the process, was elapsed. Whereupon," &c.

IX. Messengers have sometimes occasion to take instruments in the hands of a Notary upon deforcement in the execution of their office, and to protest, that the resisters and deforcers may be liable in the pains of law; especially in poindings, where he has the opportunity of a Notary; but in captions, when this opportunity cannot so well be had, his breaking

his wand of peace in presence of his concurrences, and his own execution thereon, is sufficient.

*Instrument of Deforcement.*

" AT, &c. compeared *A*, messenger, and passed with us, at command of letters of horning and poinding after mentioned, to the dwelling-house of *B*, and to the ground of the lands of \_\_\_\_\_, where there were several poindable goods and gear belonging to him; having in his hands the said letters of horning and poinding, dated \_\_\_\_\_, and signeted \_\_\_\_\_, at the instance of *C* against the said *B*, and execution of charge, to make payment of the sum of \_\_\_\_\_ of principal, and annualrent thereof resting unpaid, and in time coming, contained in the said letters, (the days whereof were long expired); and there, with his blazon displayed upon his breast, after exhibiting and reading the said letters of horning and poinding, and charge to make payment, the said *A*, by virtue thereof, in his Majesty's name and authority apprehended, and was going about to poind the said goods and gear belonging to the said *B*; but he, the said *B*, in a most furious manner, did attack and assault the said *A*, messenger foresaid, with his sword, staff, or other weapon, in the execution of his office, and beat, bruised, and wounded him, to the effusion of his blood; and, therefore, the said *A*, messenger foresaid, in regard he was forcibly resisted and deforced in the execution of his office, in manner foresaid, did break his wand of peace, and protested, that the said *B*, the deforcer, had incurred, and might be liable in the pains and penalties of law provided and accustomed in the like cases. Whereupon," &c.

*Notorial Execution of Poinding upon Letters of Horning for a Liquidate Sum.*

“ UPON the                      day of                      years,  
 by virtue of letters of horning containing warrant to  
 poid, dated and signeted                      ; raised at  
 the instance of *A* against *B*, messenger at arms, with  
*H*, Notary-public, and witnesses after designed, passed  
 to the ground of the lands of                      , and  
 dwelling-house of the said *B*; where, after crying  
 three several oyesses, open proclamation and public  
 reading of the said letters of horning, and execution  
 thereof; charging the said *B* to make payment of  
                     within                      days; in his Majesty's  
 name and authority, I lawfully apprehended and  
 poided the goods and gear after mentioned, pertain-  
 ing and belonging to the said *B*, viz. [*Here take in the*  
*goods poided; and then say*], and then and there, after  
 exposing of the bestial and samples of corn, hay, and  
 other goods and gear above mentioned, to public  
 view, I adduced and designed *I* and *K*, indwellers in  
                     , to be apprisers for appretiating of  
 the same, to whom I administered the oath *de fideli*  
*administracione officii*; and who, accordingly, have tak-  
 en upon them the said office of apprisers, after swear-  
 ing the said oath *de fideli*, took particular notice and  
 inspection of all and sundry the cattle, horse, nolt,  
 sheep, and samples of the corns, and other goods and  
 gear above written, and both with one voice estimat-  
 ed and apprised the same, at the particular prices af-  
 ter mentioned, viz. [*Here again enumerate the subjects*  
*apprised, and the prices set thereon respectively by the ap-*  
*pretiators*], and I made, subscribed, and left upon the  
 ground, where the said corns, gear, bestial, and  
 others above mentioned, were poided, an exact note  
 and list of the goods, gear, and others above express-  
 ed, and prices thereof above mentioned; and imme-  
 diately thereafter, [*or upon the*                      day of the

said month and year foresaid, in case the pointing cannot be executed on the ground, and at the cross on the same day], I caused lead and drive the horses, kine, oxen, and sheep above mentioned, moderately and softly; and did cause transport, and carry samples and rips of the said hay, as also of the corn, and different kinds thereof above expressed, with pieces and samples of the said copper, brass, and iron work; and passed along with the witnesses, procurator, and Notary-public after mentioned, to the market-cross of \_\_\_\_\_, being the nearest market-cross to the place where I apprehended the said goods, and then and there, after crying three several oyesses, open proclamation, and public reading of the said letters, and execution of charge, and exposing of the bestial, samples of corn, hay, and other goods and gear above written, to public view, I again adduced, and designed the said *I* and *K*, to whom I added *L* and *M*, indwellers in \_\_\_\_\_, to be apprisers for appretiating of the bestial, corns, and other goods and gear particularly above enumerated and expressed; to whom I administered the oath *de fidei administratione officii*; and who, accordingly, having taken upon them the said office of apprisers, and after swearing the said oath *de fidei*, took particular notice and inspection of all and sundry the cattle, horse, nolt, sheep, and samples of corns, hay, and other goods and gear above written; and all with one voice, without variance, estimated and apprised the said corns, cattle, horse, nolt, sheep, and other goods and gear particularly above mentioned, to the prices respectively above expressed, [*In case any of the prices at the market-cross be more or less than those upon the ground, there must be an exception made as to those which differ; thus, "except," &c. and then insert the goods and prices differing from those on the ground*]; and I, the said messenger, both upon the grounds, and at the said market-cross, respectively and successively, after crying three several oyesses, declared openly and public-

ly, with an audible voice, the prices at which the said hay, corns, cattle, and other goods and gear particularly above expressed, were estimated and appraised; and at the said places successively after other, I made three several times offer back again of the goods, &c. above mentioned, to the said *B*, or any person in his name, who would compear, and make payment to the said *A* of the particular sums at which the same were respectively appraised; and in regard none compeared to that effect, or to pretend right to the hay, corns, cattle, bestial, and other goods and gear above specified, and to depone that the same belonged to them; therefore, I adjudged, discerned, and declared the same to pertain and belong to the said *A*, and delivered the same to him, [or to *P*, as procurator for him], upon the ground, and at the said market-cross, respectively and successively after others, in manner following, viz. the said horse, nolt, cattle, sheep, &c. by ear or leg, and the said corns, and other goods and gear above written; by rips and pieces of each kind thereof, as symbols for, and in name of the whole, as use is, and in part payment and satisfaction to him of the sums of money, principal, annualrents, and liquidate penalties respectively contained in the said letters, with my sheriff-fee corresponding thereto; which, in respect the said *A* has made satisfaction to me for the same, I hereby assign and dispoine to him for ever. Whereupon, and upon all and sundry the premises, the said *A*, or *P*, as procurator for him, asked and took instruments, one or more, in the hands of *H*, Notary-public, present with me at the execution of the haill premises. This I did, conform to the said letters of horning, containing warrant to poind, in all points, before these witnesses                      and                      .” Or thus.—  
 “Before these witnesses, viz. to the appretiation upon the ground, *I* and *K*, indwellers in                      ,  
 and to the appretiation at the cross, *L* and *M*, in-

dwellers in , who were witnesses to the  
hail premises."

Having now finished the matter of instruments, both as to heritable and personal rights, I shall, in the next place, by way of CONCLUSION, give some advices to Notaries in relation to a right discharge of their duty, and at the same time take occasion to consider the several punishments the law inflicts upon such Notaries as transgress in the practice of their employment.

## CONCLUSION.

ADVICE TO NOTARIES FOR RIGHT DISCHARGING THEIR DUTY: WHEREIN IS SHEWN THE PUNISHMENT THE LAW INFLECTS UPON THEM, WHEN THEY OFFEND AND TRANSGRESS IN THE PRACTICE OF THEIR EMPLOYMENT.

§ 1. OUR kings and rulers have provided divers good remedies against the evil which false Notaries, called by the civilians *Notarii-putativi*, or others who were legally created, but were dishonest, might do to the republic: as, first, by *act 64, parl. 1503*, the bishops are ordered to call before them the Notaries within their diocese, and to take inquisition of their demeanour and fame, and to deprive the culpable, and to punish them according to their demerit. And, moreover, the bishops are ordained to make inquisition of them that use false instruments, and, where it belongs to their office, to punish them, or to send them to the king *Vid. supra, p. 10 & 16.*

§ 2. About the year 1540, it was observed, that, for covering fraud and falsehood, and to hinder the

villany to be discovered, the false Notaries did vary their mutual sign and subscription;—to put a stop to this undue practice, by *act* 76 of the parliament held that year, the sheriff is ordained to call before him all laic Notaries within his sherifffdom, and to have a book, in which the Notaries to be admitted are to write their subscription and sign-manual, in like manner as they subscribe all instruments, and as they will use in time coming; otherwise their instruments shall make no faith. And the ordinaries are ordered to do the like, with respect to Notaries within their diocese who are spiritual men. *Vid. supra, p. 11 & 13.* And by *act* 79, *parl.* 1563, the Lords of Session are ordered, when they admit Notaries, (for that act gives to them the authority and jurisdiction), to cause registrate their sign and subscription which they shall use after their admission. *Vide supra, p. 13, & infra, § 5.*

As also, it appeared, that many Notaries had vitiated their protocol-books, by tearing the leaves out of them, and by writing false instruments upon the blank paper, or by inserting of sheets of paper whereupon instruments were falsified by alteration of the dates of instruments, whereby the lieges were much damnified. For remedying this evil in some measure, by *act* 43, *parl.* 1555, all Notaries are ordered to compear before the Lords of Session, bringing with them their protocols, to be marked by the Lords, the leaf numbered, and the blanks marked, &c. *Vid. supra, p. 13, 20;* and by *act* 45, *parl.* 1587, they are ordered to present, before the Lords of Session, their protocol-books, to be by them considered; and if they fail, to be deprived. All instruments thereafter given forth by them are declared null, themselves declared transgressors of the king's laws, and to be punished as persons defamed and unworthy to bear office. *Vid. supra, p. 21.*

§ 3. Persons not authorized and admitted Notaries



as the law prescribes, and yet practising as such, their instruments are, by the above-cited *act* 76, *parl.* 1540, ordained to make no faith. See *Perez. ad tit. Cod. Si servus aut libertus ad decurionatum adspiraverit, n. 5, ad tit. 50, lib. 12, Cod. n. 6.*

§ 4. For punishment of false Notaries, and those that make false instruments, or who cause one to make false instruments, or who use the same wittingly, it is, by *act* 80, *parl.* 1540, statute, that such persons be punished in their persons and goods with all rigour, as it is provided, by the disposition of the common law, both canon and civil, and by the statutes of the realm.

Now, by the civil or Roman law, *l. 1, § ult. ff. ad leg. Corneliam de falsis, Pæna falsi vel quasi falsi, deportatio est, et omnium bonorum publicatio; et, si servus eorum quid admiserit, ultimo supplicio affici jubetur; i. e.* falsehood, or quasi falsehood, is punished by deportation or banishment, and publication or escheat of all the guilty person's estate and goods; and a bondman, if guilty, was to be put to death.

The civilians call *quasi falsum*, when a Notary, or any other called to write one's testament, writes to himself either a share of the heritage, or a legacy, or the like, even though the testator should dictate it accordingly, the law punishing this *quasi* falsehood in the same way as the other. *Tit. Cod. de his qui sibi adscribunt in testamento, et Brun. et Perez. ad. d. t.*

Lawyers are of opinion, that, to infer this crime of falsehood, it is sufficient if the false instrument be formed with all the solemnities, and that it can hurt another. *Brun. ad. l. 8, Cod. h. t. n. 6 & 7.* And again he observes, upon *l. 20* of that title, that falsehood is not said to be committed where there is not fraud or dole. The making an instrument to bear a false date, and not the true time when the matters therein mentioned were transacted, infers falsehood. *L. 15, Cod. h. t. & Brun. ibid. n. 3.*

An instrument, or other writing, perfected by all the solemnities requisite in law, is presumed to be true ; so that the user needs not prove the verity of it, unless by ocular inspection it appears to be suspicious, or when the Notary, or his subscription and seal, is not known to any. *L. ult. Cod. ad l. Cornel. de falsis.* But although it be not suspect in appearance, it may be false, and the other party may prove its falsehood.

Wherefore, he who uses a false instrument is undoubtedly presumed author of the falsehood ; or, being participant of it, is made guilty, unless he prove his innocence, by producing the person from whom he got the instrument, and by declaring that he will abstain from using it : for otherwise, the sole use of the instrument subjects one to the pain and guilt of falsehood, though he was not maker and writer of it. *L. 8, Cod. ad l. Cornel. de falsis.* See *Perez. ad d. t. n. 3, vol. 2, p. 189.* Menochius, in his *Arbitrary cases*, case 315, n. 29, says, that this declaration and repentance is received at any time before sentence ; and makes a distinction between the user and the author of the false writing ; which last cannot escape being processed, though he would abstain from the use of it ; for by the act or writing the guilt is closed : whereas, in the other, the use makes the guilt ; so that the user, by withdrawing in time, is free from the punishment inflicted on falsaries. *L. 13, § 1, ff. ad l. Cornel. de falsis* ; but not from a pecuniary mulct imposed at the discretion of the judge, nor from the expenses of plea. *Ant. Feber, in Cod. b. t. defin. 10 & 12.*

By act 43, parl. 1555, it is statute, that Notaries convict of falsehood, or who shall, after they are discharged by the Lords, use the office of a Notary, shall be punished by the escheat of their moveable goods to the use of the sovereign ; shall want their right hand ; and shall be banished the realm for ever ; and shall farther lose their life, as the quality of the

cause requires, at the discretion of the judge; and the causers of these falsehoods are ordained to receive the same punishment. *Vid supra*, p. 14, and act 22, *parl.* 1551, and 78 *parl.* 1563.

The modern common law in Europe makes the punishment of falsehood arbitrary, which may, in certain cases and circumstances, be extended even to the loss of life; as in *l. 1, pr. § 1, ff. ad l. Cornel. de sicariis. Vid. l. 2, fin. Cod. ad l. Cornel. de falsis, et Wesenb. ad l. Cornel. de falsis; n. 12. Gron. de ll. abrogatis, § 8. Instit. de publicis judiciis*, and the authors there cited, and *Deut.* xix, 16, & *seq.*

To banishment and escheat of goods, appointed by the Roman law, our statute superadds the loss of the right hand; which is taken from the feudal law. *Scriba vero, qui falsum alienationis instrumentum sciens conscripserit, post amissionem officii, cum infamiae periculo, manum amittat. F. 2, tit. 55, de prohibita feudi alienatione, per Frider. vers. Callidis insuper machinationibus, &c.* But the feudal law not defining which of the two hands should be cut off, the feudal lawyers determine that the false Notary should lose the hand with which he writ the false instrument; for they say he should be punished in that hand which he passed, that he may not a second time commit the like crime. *Alvarott. de feud. c. de probib. feud. alien. per Frid. § Scriba, n. 4.* And the writing hand being regularly the right one, our statute orders the loss of it. And the reason of this punishment seems to be grounded upon the equity of the thing; for it is but reasonable that that part of the body should suffer which committed the crime. And we may observe in Sueton, in the life of Galba, c. 9, p. 467, *us. Delph.* where he caused cut off the hands of a banker who dealt unfairly, and caused nail them to the counter. See the same author in the life of Claudius, cap. 15, p. 374, and *l. 3, Cod. de servis fugitivis.* Also, we see something of this nature warranted in the Levitical law; *Deut. cap. xxv, v. 12.*

By a decision, 14th July 1638, Dunbar *contra* Dunbar, observed by Durie, the Lords remitted Thomas Tulloch, and William Forsyth, Notary, to the justices, to be proceeded against according to the course of law, which inflicts death for forging a charter. But because Forsyth the Notary had confessed ingenuously at the first, and contributed greatly to the trial, by declaring all the circumstances of the forgery, they recommended to the justice-general to spare his life, and inflict any other punishment, so as the same might be spared.

§ 5. As to Notaries not duly admitted, it is statute, by *act* 79, *parl.* 1563, that none exerce the office, under the pain of death, unless they be (created by the Sovereign) examined and admitted by the Lords of Session; and their instruments or notes are ordained to make no faith. *Vid. supra*, p. 14, and § 2. Nevertheless, Sir George Mackenzie, following the civilians, observes upon *act* 78 of this parliament, that it has been found, that evidents subscribed by Notaries once admitted, though they are after discharged, are valid, they having still been habite and reputed to be Notaries. For though the Notary be deprived, it will not vitiate the instrument taken *bona fide* by persons who knew not his deprivation, till it be commonly known, or letters of publication intimate at the market-cross. But this is not indulged to instruments taken and written by those who never were admitted to the office; for they are punished to death, and their instruments are wholly void and null. *Arg. l. 7, Cod. de numer. actuariis, &c.*

§ 6. When there is no external proof for indication of the falsehood of an instrument, and yet the Notary owns and affirms, that, in the forming and extending of it, he asserts what is false, the doubt is, what can be the effect of this confession; for solving of it, notice the position, that credit is not to be given to a Notary affirming, even in the point of death, he wrote what is not true, when by this de-

clarati on there ariseth prejudice to a third party. *Surd. decis.* 107 & 135. Tyraquel, in his treatise upon l. 89, § 1, ff. *de verb. sig. n.* 9, p. 365, instances a question moved by Baldus, if we shall stand to the saying of a Notary compearing in judgment, and saying that, in the instrument set forth in the libel, he did commit an error; and though Baldus says, first, that it would seem the parties ought to stand by the declaration of the Notary, because for that end they choosed him; yet in the end he concludes the contrary, for this reason, that the election and commission of the parties is to be understood of the first act; and so it would appear the Notary was chosen and commissioned, that he might testify but once, and not that he might correct and undo what he had so said. And it is the vulgar opinion of lawyers, *Quando testis diversimodo in judicio deposuit, statur primo dictu*, as is observed by *Surd.* in *decis.* 135, n. 12. See the authors there cited.

§ 7. If a Notary hath dolously or fraudulently omitted to insert in his instrument any thing material or substantial, he is, in law, liable to the party lesed for damage and interest, which may be liquidated by an oath *in litem*. See *Brun. ad l. ult. Cod. de magistratibus conveniendis*, n. 2 & 3, and the lawyers there cited. And when a Notary leaves out of his instrument what by custom and style of such writings he ought to insert, he is to be punished; for it is not in his power to dispense with such: for he is presumed to know the laws and common customs of the country. Again, lawyers are of opinion, that, in a Notary unskilful of his profession, the mistakes should be imputed to fraud and dole, rather than to ignorance, it being a shameful thing for him to be ignorant of what pertains to his office; yet nevertheless he is not to be punished as a falsary. *Arn. Ferron. comment. in consuetud. Burdigal.* § 12, tit. *de feud.* p. 274, and the authors there cited. But a Notary is to be punished for drawing a contract that is prohibited, as those

wittingly contrived to be usurious, and yet to escape the pains of law inflicted on such persons. *Alvarot. de feud. c. de prohib. feud. alien. per Frid. § Scriba, n. 1, fol. 266.* Gasp. Ant. Thesaurus. in *Quæstion. Forens. q. 36, tit. 1, p. 93*, mentions a case of a Notary, who being required to form a testament thus,—“ I institute Caius to be my heir, so that he cannot dispose of my goods above two hundred pounds; and in the remainder I institute the children of the same Caius,” did in place of that institute Caius universal heir, but so as that he could only dispose of 200l.; and thereafter did substitute Caius’s children. And thus, as to the children, in place of an institution, he made a substitution, between which there is a substantial difference. This being complained of, a question was moved for condemning the Notary of falsehood; for the changing of the truth may be so called. But it was alleged for the Notary, that there appeared more of error and ignorance than of falsity, which is not lightly to be admitted or presumed; and that one’s deed should be interpreted many ways rather than denominated false. The senate of Piedmont acquitted the Notary from falsehood; but, because there was a manifest instance of his ignorance and unskilfulness in his profession, when he knew not the terms of law, and the difference between institution and substitution, they deposed him from the office of Notary.

§ 8. Notwithstanding a Notary must understand the common principles of the law and practice, and must have knowledge of the style of the writings; obligations, or conveyances, &c. in ordinary daily use; yet he is presumed to be ignorant of the force in law, and of the import of the clauses in these writings; and, therefore, he is not to add, out of his own head, substantial clauses, extraneous to the common style, unless he be specially required: for his duty lies chiefly in noting what is said and done between and among parties, without adding any thing of his own,

and to put it in a formal instrument. Nicholas Everhard, in his book of *Law-consultations, consil.* 26, n. 4, cites *Lud. Roman. in lib. singularium, singular.* 53, for saying that Notaries are as a pyot or parrot caged in their masters lodgings, which speak without knowing what they say; inferring that a Notary is not to be much credited, upon simple affirmation, with respect to clauses out of the ordinary style; and as to the common clauses, he is presumed to have been required and desired by the parties to insert and illustrate or amplify them by the accustomed words, though these amplifications were not to be found in his note or protocol book: for, by reason of his oath *de fidei*, made at his admission, he is not presumed to write or insert what is false. *Tyraquel. de jure, constit. possess. part. 3, limit. 31, n. 7 & 9.* And though these accustomed clauses were not set down, yet they are supposed as if they were inserted; according to the brocard, *Id quod solet apponi in contractu, vel alia dispositione, habetur pro appposito, etiamsi id non sit factum aut scriptum.* *Tyraquel, ibid.* And it is the duty of a Notary to insert in his instrument what the law and custom of the country hath introduced.—*Notarius semper censeatur rogatus a partibus, ut clausulas consuetas apponat, et illæ de voluntate contrahentium censeantur oppositæ secundum juris nostri principia.* *Anton. Thesaur. lib. 2, q. 91, n. 6, p. 392, et Craig. lib. 25 dieg. 7, Notarius formam solitam observari curabit, &c. et arg. l. 31, § 20, ff. de ædilitio edicto.*

§ 9. A Notary must not officinally press and thrust himself upon men's business, but expect to be called, and required by the parties to take instruments in relation to the business laid before him, and to assist them therein as his office enables him; and the lawyers make this calling and requisition necessary to validate the Notary's instrument, and that the instrument bear it. *Craig. lib. 2, dieg. 7, Harprecht. de processu judiciario, et Maximil. constit. concerning Notaries in the year 1512, § 1, in fin. et supra, p. 40*

As also, he ought to make attestation for no other thing than what falls under the senses of his body, and which he distinctly perceives. *Surd. decis.* 284, n. 2, p. 546, et *Rob. Marant. disput.* 6, n. 35, p. 518. *Notarius non creditur de his quæ consistunt in animo contrahentium. Et auctor. Art. Notariat.* p. 173, 174, et *Craig. lib.* 2, *diag.* 7. *Generaliter hoc tenendum est de notariis, ut fides illis tantum adhibeatur in iis quæ sub sensum cadunt: nam si notam dederint de ea re quæ sub sensum non cadunt, non creditur.* In matters of his own concern, he cannot take instruments that are to make faith; for he cannot be both Notary and party. *Vid. auct. Art. Notar.* p. 192, q. 6. Neither can he discharge that office, and be procurator for a third party in his own instrument. *Vid. supra*, p. 36.

§ 10. The office of a Notary being public, *i. e.* for the welfare of the people, and useful to the commonwealth, he can be compelled and forced to assist parties in their affairs, wherein help is necessary and required. *Brun. ad l.* 9, *Cod. de defensor. civitatum*, n. 6. *Perez. ad d. t.* n. 9, et *auct. Art. Notariat.* p. 212, q. 35. But then he must be insured of a reward, and of payment for his pains; otherwise he is not bound to serve. *Rob. Marant. specul. aur. tit. de actor. editione*, n. 59, p. 385. Though he should take nothing from poor people. *Brun. arg. l.* 28, *Cod. de episcop. audient.* n. 5. *Eodem modo protocollum tabellarii, sive notarii, partibus contrahentibus commune esse debet; proinde si notarius requisitus, nolit exhibere protocollum, mandatis pœnalibus ad instantiam alteruterius partis ad hoc compelli potest; nam notarius qui non edit, est in dolo præsumpto, et ad interesse tenetur.* *Gall. Pract. obs.* l. 1, obs. 106, n. 6.

§ 11. When a Notary is about to write an evident or conveyance, he ought to make a note of all that the parties concerned design, and do agree to have done, and according thereto precisely to form the writing; but before extending it in a scroll or sketched copy, consult with himself,—1. What the law has



determined in that case: 2. All the pleas and controversies that have occurred on that head, and the decisions given thereon, that thereby he may receive direction and instruction at the cost of others; and, 3. That he may keep his employers from all occasion of future dispute: for he ought to think with himself, what is possible to fall out, that might occasion questions in the agreement, either from the circumstances of the persons, or from the nature of the subject-matter of the contract; but chiefly, that in all and in every part of the writing he should be at much pains distinctly to express the meaning of the parties, in plain obvious words; avoiding ambiguous phrases, and such as are capable of a double understanding or sinister interpretation; eviting as much as is possible tautologies in the exegetic or declaratory expressions, and unnecessary repetitions of the same thoughts or words. But, after all his labour on this head, he may perceive that, upon examining into the pleas that have hitherto occurred about the meaning of parties, or the interpretation of words and expressions in writings, and the questions moved concerning the manner of their application, he will find great truth in what an ancient lawyer said, *that the dispositions of the dead depend much upon the arbitrement of the living*; and from his own experience he will be convinced, as Johan. Grivellus writes, (*Decisione Dolona* 122, n. 1 & 3), of the doubtful and hazardous event of these pleas and questions, concerning the interpretation and meaning of men's words in the disposal of their estate; that in these, as in all other cases that are, or can be made doubtful, every one has a peculiar apprehension, a singular taste, and personal judgment, many time different from one another; and it may be diverse from what the party himself intended.

§ 12. When a Notary is called to take an instrument upon any occurrence, he makes and writes in a loose paper, or upon one of these evidents which relate to the business, a note of what passed; which

he extends into an instrument, recorded in his protocol, out of which he gives an extract. Now, if it happen that there is a difference between the note or abbreviate, and the copy in the protocol-book, it is queried, Which of the two are to be followed and believed? Gasp. Anton. in his *Quest. Forens. lib. 8, q. 87*, says, that if it be doubted that the instrument delivered to the party agreeth not with the authentic in the protocol, that in the protocol, out of which the instrument is extracted, is only regarded: for Notaries are or ought to be exact in writing and filling up their protocol before they give out the extract, and the principal makes greater faith than the copy. But in the case proposed, Anton. in the above-cited question, tells us, that the parliament of Piedmont determined, that the note or abbreviate, which is reckoned the original mother and fountain of all that followed, is more to be credited than the copy in the protocol. However, these questions have no place with us: for our practice doth not allow to alter their writings or instruments after they have been once produced in judgment; and faith is only given to a formal instrument signed and attested by the Notary; nor to that neither in many cases, except it be signed by the witnesses present at taking thereof.

§ 13. Farther, it is doubted among lawyers, if a Notary can supply, or add to an instrument, clauses not written in his note or abbreviate, and not inserted in the instrument recorded in the protocol-book. *Surd. decis. 223, n. 2, p. 410*, says, that a Notary cannot insert in the instrument what is not to be found in the note, except there be in it an *et cet. &c.* which he calls *clausula ceterata*; and even in that case he cannot alter the substance and facts. And in *decis. 213, n. 7, p. 388*, a Notary may, to his instrument, add what he through simplicity or mistake hath omitted.

§ 14. As it behoved to be proven by the witnesses or confession, that the Notary had mistaken the words

and order of the testator, so hence another question doth arise, when there is a discrepancy betwixt the tenor of the instrument as attested by the Notary, and the depositions of the witnesses present at taking of the instrument, If more credit should be given to the first than to the second? To which it is answered, That, in competitions of credulity, the Notary, who is a public person, and being of good fame, is more to be believed than one of the witnesses; but the deposition of two or more of the witnesses present preponderates and over-rules the attestation of the Notary: For, in such cases, the Notary is in place but of one witness. *Joa. a Beust. de jurejurand. p. 178, n. 389.* But two witnesses conclude in law, and one doth not. And, in the like case, *Gasp. Ant. Thesaur. in Quest. Forens. lib. 1, quæst. 31,* observes, that there is place for action of falsehood against the Notary, and that he had seen the judges proceed to torture of the Notary. But there will be with us in matters of moment little occasion for this controversy, seeing, by *act 5, parl. 1681*, it is declared, that no witnesses but subscribing witnesses shall be probative in writs of importance, as mentioned in the act. This law seems to be borrowed from France, where, for removing these difficulties, it is, by the *Regal Constitutions*, ordained, that parties and witnesses subscribe all acts. See *Thesaur. in the above-cited question, n. 6, p. 67.*

§ 15. Notaries, when employed by subject-superiors to make out charters for their vassals, ought to form them in the best style, upon parchment, in Latin: for such Notaries as draw informal charters, are liable to be deposed, and otherwise censured, by the Lords of Session.

§ 16. In taking of seisins, Notaries ought carefully to observe the solemnities mentioned in the second title of the second part: for, in omitting of any of them, they may be deposed and punished by the Court of Session. As also, they ought carefully to

insert their long doquet : for Sir Thomas Hope relates, that a seisin was found null, because it wanted these words, *vidi, scivi, et audiui*, title *Seisins* ;

Primrose *contra*

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likewise, they ought diligently to observe how the lands hold, whether ward, or feu, containing a clause *de non alienando, et non contrahendo debitum, sine consensu superioris* : for in any of these cases, subaltern seisins before confirmation cannot be taken without incurring recognition. And the Notary ought regularly to write and extend instruments of seisin with his own hand ; but if he does not, the doquet subjoined must always be written by himself ; and in case the instrument is written by another, the doquet must bear it to be *manu aliena fideliter scriptum, me aliis rebus occupato*. *Vid. auct. Art. Notar. p. 13, and Craig, lib. 2, dieg. 7.* The writer of instruments of seisins need not be designed : for seisins come not under the act of parliament 1593, not being writs made by parties, as that act means, but the act of a Notary ; as was found, 26th June 1634, Lord Johnson *contra* Earl Queensberry, observed by Durie.

§ 17. In p. 29 and 30 of this treatise, I have given the doquets used in attesting copies of writs, or subscribing papers for those that cannot write ; it remains, in this place, to give the Notary some general directions thereanent. And, first, as to attesting copies of writs, there are requisite two Notaries and four witnesses ; and the Notaries ought to make out a fair and clean copy of the writ to be attested, without rasings, interlineations, obductions, or alterations of the letters, subjoining the subscriptions of the parties and witnesses, and thereafter compare the same with the original before the four witnesses, and then adject the doquet referred to above, with their own and the witnesses subscriptions. To this doquet, some Notaries add their short one ; but that is superfluous ; for no more is requisite than the doquet above mentioned, and their distinction as Notaries.

But, in the subscribing of writs for persons who cannot write, greater care and circumspection is requisite : wherefore, in order to illustrate this matter, it is necessary to know, that, in ancient times, as in other states, so in Scotland, every one, or the greatest number of people, could not write, and subscribe their names ; wherefore, in supplement, as among the Romans, they made use of seals, which, in token of their being bound by the writing, the parties appended and affixed, which was sufficient : and as this custom was in Scotland before the days of King David, so, by the *Reg. Maj. lib. 3, cap. 8, n. 3 & 4*, it was authorized and made a law.

In the case of Mr. Andrew Cadzow, January 21, 1503, mentioned by Balfour in his *Practics, tit. Instruments, cap. 5*, I find, that if the seal of an evident be crushed and broken, in such manner that the owner of the evident fears it may perish entirely in a short time, it is declared, the Lords, or any other judge-ordinary, at the owner's desire, may take the depositions of divers famous witnesses who knew the man to whom the seal pertained, and recognosce the same, and thereafter transume that evident, and ordain that the transumpt shall have as great faith in judgment, and outwith the same, in all time coming, as the principal itself ; provided that all parties having interest in the said matter, if any be notourly known, be lawfully warned and summoned hereto. This practic serves as a proof, that a seal alone, without any subscription, was at that time sufficient ; and it seems this custom continued until the year 1540, when there was an act of parliament made thereanent, to prevent several inconveniences, as mentioned in the act, which shall be noticed hereafter.

Mons. Pasquier, in his book *Les recherches de la France, lib. 4, cap. 13*, shews, that there was a time when in France the signing of writings was not known ; but says, one ought not to think that it proceeded from ignorance, but from an unaccountable

long custom that had crept in among them; and he rehearses an expression of St. Bernard, in his *epist.* 130,—*Sigillum non erat ad manum : sed, qui leget, agnosceret stylum, quia ipse dictavi.* And the like is to be found in *epist.* 339,—*Materies locutionis pro sigillo sit, quia ad manum non erat.* If he had subscribed his name, he needed not to have supplied the want of his seal by his style, to make known who had sent these letters. And he further observes, that, in his days, that custom obtained in all Germany and Switzerland; yea, moreover, he says, when I see that contracts perfected before Notaries, bear not execution but by means of the seal, I make myself almost to believe that the tabellions in ancient times did not sign or subscribe.

When the kings of Spain are, by the gout or other disease, become so infirm as that they cannot with a pen subscribe dispatches, or other public writings, which ought necessarily to be subscribed with their hand, they make a little instrument of gold, as a mark, which they call *Stampiglia*, on which these words are engraved,—*Io el Rey*, i. e. *I the King*; which instrument being dipped in ink, is applied by the chief ministers, upon the paper or parchment, in the place of the subscription; and thus it hath the same force as if it were written with a pen in the king's own hand. And in this manner Charles II, late king of Spain, in the year 1700, signed the testament that hath made so much noise in the world, whereby the succession in the Spanish territories was conferred on Philip V, a son of the royal family of France, to the great disappointment of the house of Austria.

There is in Scotland an instrument like to this *Stampiglia*, called a *Casbet*, of silver, on which all the letters of the king's name, as he uses to write, are engraven, which is applied to signatures, the warrants of such gifts and charters as formerly the Lords of Treasury, and now the Barons of Exchequer, are au-

thorized to expedite, without the king's proper handwriting; and which has been in use since the union of the two crowns of Scotland and England, in the person of King James VI, in the year 1603; before which time, when our king resided here, all public writings relating to the king's revenue, or government of the state, were subscribed by the king's own hand; but now he writes his name on the top of the signature, or other writing, and the secretary signs at the foot: so the cashet is applied at the top of the signature, and subscribed by the Barons of Exchequer. This cashet is in the charge of the keeper of the great seal for *Scotland*.

But sealing of writs, in place of subscribing, being found very dangerous, because seals were liable to be lost or forged; therefore, by *act 117, parl. 7, Ja. V*, it is statute,—‘That, in time coming, no faith be given to any obligation, bond, or other writing, under a seal, without the subscription of him that owes the same, and witnesses; or, if the party cannot write, with the subscription of a Notary thereto.’ And this act is further illustrated by *act 80, parl. 1579*: for there it is statute,—“That all bonds and obligations of great importance, to be made in time coming, shall be subscribed and sealed by the principal parties, if they can subscribe, otherwise by two famous Notaries, before four famous witnesses,” &c. Sealing is now out of use, and is not necessary in any private writ by our present custom; as also, the leading of the parties who subscribe by the Notary, as enjoined by *act 29, parl. 1555*. In our practice, all writs exceeding 10 l. Scots, are interpreted writs of importance, requiring two Notaries and four witnesses: for in a decision, 13th November 1623, *Marshall contra Marshall*, observed by *Durie*, the Lords “found an obligation of 100l. null, which was subscribed by a Notary and four witnesses, because it was not subscribed by two Notaries; and found any writ bearing 100l. and above to be a matter of

importance, and would not suffer the party to retrench the obligation to any less quantity inferior to the sum therein expressed." As also, see the 18th December 1668, *Swinton contra Brown*, observed by Stair. And the subscription of four witnesses is as essential a solemnity as that of the two Notaries: for by a decision, 31st January 1623, *Fotheringham contra Watson*, the Lords "found an obligation null, albeit it was subscribed by two Notaries; because it was only subscribed by three witnesses." As also, see the case of *Leckie contra Cunningham*, 20th November 1627, both observed by Durie; and the 13th December 1671, and 5th January 1672, *Jack contra Jack*, observed by Stair.

Contracts of marriage, whereupon marriage followed, although subscribed but by one Notary, have for ordinary been sustained, although the sums therein were far exceeding 100l. Scots; as may be seen by several decisions, particularly *Grieve contra Cant*, penult. March 1626; *Nisbet contra Newlands*, December 10, 1630; and *Lockhart contra Simpson*, ult. February 1637; all observed by Durie; and *Breadie contra Breadie and Muir*, 1st July 1662, observed by Stair. As also, testaments, though containing matter of great importance, will be valid, although subscribed but by one Notary; and by *act 133, parl. 1584*, ministers are authorized as Notaries in the case of testaments. *Vid. supra, p. 15.* And by a decision, 18th January 1678, *Gray contra Lady Ballegerno*, observed by Stair, a testament naming tutors was found valid, where the defunct, not being able to subscribe, and having given warrant to ministers to subscribe for him, died before they fully subscribed the same. But if, by the laws of the place where the paper is subscribed, one Notary be sufficient, it will be sustained; as was found 11th January 1676, *Paton contra Pitcairn*, observed by Stair; in which decision, a factory made by a stranger in Holland, and subscribed by one Notary, was found valid, seeing by the



custom of Holland no more than one Notary is required.

A Notary ought to know the persons for whom he subscribes, lest one should assume the name of another. G. Anton. Thesaur. mentions a case (*quæst.* 78, *lib.* 2, *p.* 362) wherein a Notary being accused of falsehood, because he had given a discharge before witnesses in absence of the creditor, one having personated him, the judges agreed that the Notary ought not to be punished as a falsary. But it was questioned, Whether or not he should be punished as having committed a malversation in his office? Some of the judges were of the opinion, that although Notaries were rash in subscribing for persons they did not know, yet the fact was not punishable; seeing no punishment was prescribed by law against Notaries subscribing for persons they did not know, when they were called and required so to do; and a Notary being a public person, he might, being required, subscribe for any one; and where the law did not make a crime, the judges could not condemn. Others were of opinion, that the Notary was culpable, especially as he had acknowledged he had been required by a person he did not know; and that he might be brought into a legal suspicion of fraud. The judges determined, that although, in cases where there is no peculiar law or statute, the Notary could not be punished to the utmost rigour; therefore, they found he had committed a malversation in his office, and fined him in fifty pounds. And by act of sederunt, 21st July 1688, Notaries are "discharged to subscribe writs for persons who cannot write, unless it either consist with the Notary's knowledge, that he for whom, and at whose command, they subscribe, is the person designed in the writ; or that the same may be attested by those who subscribe witnesses to the Notaries their subscription, or by other credible persons; and which the Notaries are to mention when they subscribe for the party."

The Notary ought likewise carefully to observe the condition of the person for whom he subscribes, that he be sound in memory and judgment, and capable to understand the nature and design of the paper which the Notary is to subscribe for him, so as to give him warrant distinctly, in presence and audience of the witnesses. And in evidence thereof, by *act 5, parl. 1681, the party must touch the Notary's pen.* This warrant, or command, given by the party to the Notary, is an essential solemnity, and must be expressed in the Notary's doquet; otherwise the disposition, or other writ, will be null, and cannot be supplied by the witnesses inserted in the paper; as was found the 26th July 1667, Philip *contra* Cheap, observed by Stair. But if the Notary shall, when the party is incapacitate to give warrant and command, subscribe any writ for him, he is liable to be deposed, and otherwise censured by the Lords of Session; as was found 20th November 1680, Stewart *contra* Smith, observed by Stair; where two Notaries, for subscribing a testament without warrant, were deposed from their office, and the sheriff of the shire wherein they resided was ordered to send them both to *Edinburgh*, in order that they might be set upon the cock-stool, with a paper upon their brows.

This subscription of the two Notaries and witnesses must be at one and the same time, *unico contextu*; for the law doth no more trust Notaries subscribing separately, than it doth the testimony of singular and not concurring witnesses. And this seems clear from the statute itself above cited, *act 80, parl. 1579*, requiring the writs to be subscribed by two Notaries, before four witnesses *being present at the time*; which implies, that both the Notaries must subscribe before the witnesses then present; whence they are called *Co-notaries*. See Macmoran *contra* Black, January 28, 1624, and Cow *contra* Craig, 20th March 1633, both observed by Durie. And this seems to be confirmed by the authority of the civil law, *novel. 73, cap. 8.*

§ 18. Notaries are likewise censurable, if they shall omit to insert in their instrument what by the parties they are required to insert, although the points be not a solemnity necessary in such instruments : but these points which are no part of the solemnity, must be astricted by the witnesses inserted in the instrument.

§ 19. All the other duties of Notaries are reduced to the having of such an entire fidelity, and taking all possible care to avoid, in the discharge of their office, every thing that may be contrary to justice and truth, so as that they may commit nothing on their part against either of them ; for that would be to violate in the highest degree their first and chief duty ; and that they have no hand in any fraud, but that they oppose all such ways, if the party should offer to make use of them ; and that they make themselves instruments of promoting justice and peace between the parties ; on which depends the quiet of families, the security of estates, the validity of engagements, the ties of partnerships, and of all sorts of commerce of the greatest moment ; and that they mediate and negotiate affairs to all persons in a manner that is suitable to an office that is so necessary and of so great importance ; and likewise, they ought to proportion the profits or recompense to which they may pretend, not to this great consequence of their ministry, but to that which custom, the regulations of the places, and an upright integrity, altogether void of interest, will allow them to take ; moderating even the fees which they may justly claim, with respect to persons who are not able to pay them according their labour ; and that in consideration they frequently receive gratuities from other persons far above what they could reasonably expect.

Finally, All Notaries are to advert, that they should be skilled in the law, at least in those parts of it which respect their office, and to be able to make known to the parties who employ them, the solemn-

ties and other things required in law, for bringing to good effect their purposes and design; and moreover, to understand those affairs and facts, from which, as being reprobated and prohibited in law, they should abstain; whereas otherwise Notaries are liable to parties for damage and interest they may sustain through their ignorance.

I have here given to Notaries the most general principles and fundamental rules to be known and observed in the exercise of their office; upon which I would not have them to sit down, and rest themselves satisfied without going farther; but I advise them to learn and diligently notice the laws and practice of this kingdom and other places, which may have any respect to their art and office; and as for those cases which, upon account of their variety and diversity, may have difficulty and ambiguity, I counsel them not to trust over much to themselves, but to have recourse to others more learned in the law, that, through their want of knowledge in this art, or by their default, none come to be prejudged; seeing, as has been said already, they will be bound to repair the damage of parties flowing from either of these causes.

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IN order to communicate to our readers as much information as the nature and bounds of the present publication can possibly admit of, we have thought proper to subjoin to this work,

THE FORM AND PROCEDURE OF SERVICES OF HEIRS,  
AS CARRIED ON BEFORE THE MACERS OF THE  
COURT OF SESSION.

EVERY practitioner knows, that where a person is about to serve heir to his predecessor, in lands wherein the predecessor died infest, lying in different counties or stewartries, it is competent to such heir, in order to avoid the expense of separate services to the lands lying in different jurisdictions, to carry on his service all at once before the macers commissioned for that purpose.

In every service of an heir, the person serving, who is styled the *claimant*, must either appear personally in court at the service, or, in case of his absence, must execute a procuratory, which may run in this form.—

*Procuratory for serving one Heir to his Predecessor.*

“ I, *A B* of *C*, eldest lawful son of the deceased *J B* of *C*, hereby constitute and each of them, jointly and severally, to be my procurators and attorneys; with full power, warrant, and commission, for me, and in my name and behalf, to purchase, and procure me duly and lawfully served nearest lawful heir of the said deceased *J B* of *C*, my father, in special, in all and sundry lands, heritages, annualrents, and others, wherein my said father died last vest and seized; and to procure such service duly retoured to the Chancery; and thereafter, to obtain me duly and lawfully infest and seized in such lands and estate; and thereupon, and upon all and sundry the premises, to ask and take instruments and documents, one or more; and generally, all and every thing thereanent to do, which I might do myself if personally present. Ratifying hereby, and holding firm, all and whatever things my said procu-

rators shall lawfully do, or cause to be done in the premises. And for greater security, I consent," &c.

*N. B.* This must be written on stamped paper.

'This procuratory being signed, a bill is presented to the Lords, of the following tenor.—

*Bill to the Lords, for a Commission to the Macers.*

" MY Lords of Council and Session, unto your Lordships shews your servitor, *A B of C*, eldest lawful son of the deceased *J B of C*; that I am to raise brieves forth of our Sovereign Lord's Chancery, for serving me nearest lawful heir-male of the body of the said deceased *J B of C*, my father, not only in general, but likewise in special, in all and sundry lands, heritages, annualrents, and others, wherein my said father died last vest and seized, as of fee, at the faith and peace of our Sovereign Lord, lying within the sheriffdoms of *N* and *C* respectively. But that in regard separate seisins within the said different jurisdictions are chargeable and tedious, and several questions and debates may arise anent the serving of the said brieves, which cannot be so well determined before the sheriffs of the said sheriffdoms, or their deputies, that, therefore, necessary it is to have the said brieves served before your Lordships four ordinary macers, or any two of them, jointly, as sheriffs, &c. for that effect, of the said respective sheriffdoms of *N* and *C*, &c. and that within the Parliament or New Session-house of Edinburgh, as the most fit and convenient place, where all parties having, or pretending to have interest, may be heard to oppose or object, and any doubts which may happen to arise may be best resolved and determined. Herefore, I beseech your Lordships to grant warrant to the director of his Majesty's Chancery, and his deputies, to emit and direct forth of the said Chancery, a commission, under the quarter seal, (otherwise called

the testimony of the seal to be made use of within Scotland, in place of the great seal thereof,) in due and usual form of Chancery; making, constituting, and ordaining the said four ordinary macers before your Lordships, or any two of them, jointly, sheriffs or bailies of regality, &c. for that effect, of both and each of the said sheriffdoms of *N* and *O*, and giving, granting, and committing to them, or any two of them, jointly, as said is, his Majesty's full power, and special command, to sit within the said Parliament or New Session-house of Edinburgh, for serving of the said brieves; and, for that end, to receive, open, and cause duly proclaim the same; and to begin, affirm, and fence courts, one or more, and, if needful, to continue the same; and to make, constitute, and ordain clerks, serjeants, officers, dempsters, and all other necessary members of court, for whom they shall be answerable; and to choose a sufficient number of persons of inquest, most proper and least suspected, and who best know the verity of the matter, and cause them appear accordingly, and pass upon the inquest of the said brieves, each person under the pain of 40*l.* Scots money; and generally, all and every other thing requisite and necessary in and anent the premises, to use and exerce, as fully and freely as the sheriffs of the said sheriffdoms might have done therein themselves respectively, if the said service had been led and deduced by and before them; and that your Lordships may admit and declare the said Parliament or New Session-house of Edinburgh, to be as lawful and sufficient, to the effect foresaid, as if the same were the Tolbooth, or other usual court-place of the respective head burghs of the said sheriffdoms of *N* and *O*; and may likewise dispense with the time of vacance, if any such shall happen to be during the time of the said services; and to declare the same to be equally good and sufficient, as if done in lawful time of session. According to justice, and your Lordships answer."

This is signed by a writer to the signet.

The clerk to the bills writes upon this bill,—“*Fiat ut petitur*, dispensing with the place and time of vancance :” and the bill is signed by the Lord Ordinary on the bills, and by the clerk.

The bill is then given into Chancery, where a commission is written out in Latin, in the precise terms of the bill ; and the Chancery issues as many brieves as there are sheriffdoms, or other jurisdictions, where the lands lie.

The commission is then carried to an under clerk of Session, who goes with the macers before the Lord Ordinary, and there they accept and give their oaths *de fidei*, which the clerk certifies on the back of the commission, and instruments are taken in his hands with a guinea.

The macers then proceed to execute the office committed to them ; and their proceedings are minuted, in the following form, in what are called *the courts of the service*.—

*Courts of the Service of the Brieves issued forth of his Majesty's Chancery, at the instance of A B of C, for serving him nearest lawful heir-male of the body of the deceased J B of C, his father ; holden within the Parliament or New Session-house of Edinburgh, in the manner after mentioned, the days after specified, viz.*

“ AT Edinburgh, the            day of            years, and within the Parliament or New Session-house of Edinburgh, compeared personally *D E*, &c. the four ordinary macers before the Lords of Council and Session, as sheriffs of the several sheriffdoms of            and           , specially constituted, to the effect after-mentioned, in virtue of his Majesty's commission after specified ; and also compeared *D E*, as one of his procurators, specially constitute by the said *A B* of *C*, eldest lawful son of the said deceased *J B* of *C*, and produced his Majesty's commission, by deliverance of the Lords of Council and Session, and passed under the testimony of the seal appointed,



in consequence of the union of Scotland and England, to be made use of in Scotland, in place of the great seal thereof, making, constituting, and appointing the four ordinary macers of session, or any two of them, jointly, sheriffs of the two sheriffdoms before specified, for serving the two brieves, (to be issued forth of our Sovereign Lord's Chancery, for cognoscing the said *A B*, nearest lawful heir-male of the body of the said deceased *J B*, his father), in special, in all and sundry lands, heritages, annual-rents, and others, in the fee whereof his said father died last vest and seised, at the faith and peace of our Sovereign Lord, within the said two sheriffdoms; containing dispensation anent the place and time of vacation, if any such should happen; and dated the \_\_\_\_\_ day of \_\_\_\_\_ and sealed the \_\_\_\_\_ of the same month; with the said macers their acceptation of the said office, on the back of the said commission, dated the \_\_\_\_\_ day of \_\_\_\_\_ last, signed by the Lord *M*, one of the said Lords of Session, and *J C*, one of the under clerks of session, bearing, that the said macers had made faith *de fidei administratione*; and also produced a procuratory, and patent letters, granted by the said *A B* of *C*, to blank persons, constituting and appointing them, jointly and severally, his lawful and irrevocable procurators and attorneys, for procuring him, the said *A B* of *C*, duly and legally served and retoured nearest and lawful heir foresaid, of his said deceased father, dated \_\_\_\_\_.

After production of which commission, acceptance, and procuratory, the said *D E*, attorney foresaid, desired the said macers to proceed to execute the office of sheriffship thereby committed to them; and, accordingly, the said macers elected and choosed \_\_\_\_\_ writer to the signet, to be clerk to all the courts, for service of the said *A B* now of *C*, as heir foresaid; as also, *T F* and *R W*, jointly and severally, to be officers; and *I K* to be dempster for the courts of the said services; and who being all

solemnly sworn, made faith *de fideli administratione*. And then the said court was fenced, in name and authority of his Majesty, and by order, and in name and authority of the said macers, as judges by the said commission. And the court being so fenced, the said *D E*, attorney foresaid, produced two several brieves, issued forth of his Majesty's Chancery, directed to the said macers, or any two of them, as sheriffs of the said sheriffdoms of                      and                     , and purchased at the instance of the said *A B* of *C*, for cognoscing him nearest and lawful heir-male of the body of his said father, in all and sundry lands, and other heritages, within the said respective sheriffdoms, wherein his said father died last vest and seised, as of fee, at the faith and peace of our Sovereign Lord. And the said two brieves being openly and publicly read, the said judges appointed both the said brieves to be served within the Parliament or New Session-house of Edinburgh, upon the day of                      next to come; and ordained the said *T F* and *R W*, officers, jointly or severally, to pass to the respective market-crosses of                      and                      head-burghs of the foresaid sheriffdoms of                      upon one of the ordinary market-days of the said respective head-burghs, in open time of market, and in presence of famous witnesses, and there and then, *respectivè* and *successivè*, to duly and lawfully proclaim the said brieves to be served within the Parliament or New Session-house of Edinburgh, the said                      day of                      next to come, in the hour of cause, with continuation of days, and with certification according to law; and to observe the whole order prescribed by act of parliament, (Ja. IV, p. 6, c. 94), anent proclamation of brieves, in all points. And also, the said judges ordained the said officers to summon a proper inquest, to attend said place and day, and each person under the pain of 40l. Scots. Likewise, the said judges granted and subscribed a precept to the said officers for that effect, of this date; and

which precept also contained a commission granted by the said judges to                      and                      , or either of them, jointly and severally, as commissioners for taking the oaths and depositions of the officers, executors of the said brieves, and of the witnesses, upon the verity of the execution thereof; which precept and commission the said judges caused deliver, along with the said two brieves, to the said officers, to be proclaimed accordingly; and then the said judges adjourned the court to the said                      day of                      next, then to be held in this place; and continued the service of the said brieves to the said day, in the hour of cause; ordaining all parties having interest then and there to attend, whereof they were lawfully warned *apud acta*; and whereupon, and upon all and sundry the premises, the said *D E*, attorney foresaid, asked and took instruments in the hands of the said clerk of court."

The form of the precept signed by the macers is to this effect.—

“ WE two of the four ordinary  
 macers before the Lords of Council and Session, as  
 sheriffs of the sheriffdoms of                      and  
                     specially constituted by virtue of his Ma-  
 jesty's commission, by deliverance of the said Lords  
 of Session, under the testimony of the seal appointed  
 in consequence of the union between Scotland and  
 England, to be made use of within Scotland, in place  
 of the great seal thereof, directed to us the said ma-  
 cers, or any two of us, jointly, for sitting in the Par-  
 liament or New Session-house of Edinburgh, as judges  
 of the respective jurisdictions foresaid, for serving of  
 two several brieves, issued forth of his Majesty's  
 Chancery, to us, or any two of us, jointly, as judges  
 foresaid; and purchased at the instance of *A B* of *C*,  
 eldest lawful son of the deceased *J B* of *C*, for cog-  
 noscing and retouring the said *A B* of *C*, nearest and

lawful heir-male of the body of the said deceased *J B of C*, his father, in special, in all and sundry lands, heritages, annualrents, and others, within the said sheriffdom, wherein his said father died last vest and seised, at the faith and peace of our Sovereign Lord; and as having, by the said commission, his Majesty's full power and special warrant, to receive, open, and cause proclaim the said brieves; to begin, affirm, fence, and continue courts, one or more, for serving thereof; to make, create, constitute, and ordain clerks, serjeants, dempsters, officers, and all other necessary members of court; to summon the inquest to pass thereupon; and to do all other things requisite thereanent; and as having accepted of the said commission, which is dated the                      day of                      and sealed the                      of same month and year, have made, constituted, created, and ordained, and hereby make, &c. you *T F* and *R W*, and each of you, jointly and severally, our very lawful and undoubted officers, to the effect after specified, of the said sheriffdoms of                      and                      , with full power and commission to you, jointly and severally, as said is, to pass, in his Majesty's name and authority, and ours, to the respective market-crosses of the head-burghs of the said sheriffdoms, successively, upon a lawful market-day, and there, between eleven and twelve of the clock forenoon, in time of open market, and in presence of famous witnesses, to duly and lawfully read and proclaim the said two brieves respectively, or cause the same to be read and proclaimed by another, (the words being also pronounced by one of you our said officers), viz. the one of the said brieves, directed to us as sheriffs of *R*, at the market-cross of *R*, as head-burgh of the sheriffdom thereof; and the other of said brieves, directed to us as sheriffs of the said sheriffdom of *L*, at the market-cross of *L*, as head-burgh of the said sheriffdom thereof; and both the said brieves to be served within the Parliament or New Session-house of

Edinburgh, the                      day of                      next to come, in the hour of cause, with continuation of days, before us the said macers, or any two of us, jointly, as sheriffs, to the effect foresaid, of the said sheriffdoms; and to warn and summon all persons having, or pretending to have, interest in the said matter, by open proclamation at the said market crosses, to compare before us, or any two of us, as judges foresaid, the said day and place, in the hour of cause, to hear and see the said brieves duly and lawfully served and retoured to our Sovereign Lord's Chancery, in due and competent form, or to oppose and object a reasonable cause in the contrary; and to make attestation and certification to them, according to the law in that behalf: As also, we charge and command you, that ye lawfully summon, warn, and charge a sufficient number of persons most worthy, least suspected, and who best know the verity of the said matter, to compare before us the said day and place, in the hour of cause, with continuation of days, to pass upon the inquest of the said brieves, each person under the pain of 40l. Scots money, as ye will answer to us thereupon.

And further, for preventing the expense and trouble of bringing the said officer and witnesses to Edinburgh, to depone on the verity of the execution of the said brieve, we hereby, as sheriffs in that part foresaid, give full power, warrant, and commission to                      , or any one of them, with full power to him to choose a clerk, for whom he shall be answerable, to take and receive the oaths and depositions of the said officer, executor of the said brieve, and witnesses, upon the truth and verity of the executions thereof, after that the said execution is openly read in their presence, and that at                      the                      day of                      , and to cause put all their depositions in authentic writing, to be subscribed by the deponents, if they can write, and the said commissioner and clerk; and to report the same, with

this present commission, to us, before the said  
 day of                      next. For doing of all  
 which, these presents shall be a sufficient warrant.  
 Given under our hands, and subscribed by us in  
 court upon this and the                      preceding pages,"  
 &c.

This precept and commission, being of the nature  
 of a judicial deed, is written upon common-paper,  
 and is transmitted to the country for the purpose of  
 carrying into execution; and great care ought to be  
 taken in the manner of executing both it and the  
 brieves, and proper instructions given to the person  
 who is to have the charge of executing them. The  
 following memoranda seem proper.—

*Memoranda for P S, Officer.*

WHEN he comes to R, (which must be, [*Here  
 insert the market-day*]                      next), he is, between  
 eleven and twelve forenoon, to go to the market-  
 cross, and there, in presence of the two witnesses,  
 (for he must take witnesses with him, who may re-  
 turn to verify the execution with him upon oath),  
 read over the brieve marked R, and precept from the  
 macers, and then the schedule subjoined to the copy  
 of the brieve; after which, he must fix and leave the  
 copy upon the cross.

He must do the like with regard to the other brieve  
 and schedule, at the cross of L, upon  
 next.

And will remember to cry three several *oyeses*,  
 at each cross, before he begins.

*Schedule of what is to be signed by the Officer, Executor of the Brieves, and Witnesses, and to be left at the Market-Cross.*

A copy of the brieve, and of the director of the Chancery's subscription on the back, is prefixed; and then is added,—

“ I, *P S*, as officer of the-sheriffdom of  
 specially constituted, to the effect after men-  
 tioned, by virtue of a precept dated the  
 day of , given to me by the macers of  
 session, as sheriffs of the same sheriffdom, also spe-  
 cially constituted, for serving of the-foresaid brieve,  
 issued forth of his Majesty's Chancery, at the instance  
 of the said *A B* of *C*, conform to the commission to  
 them, or any two of them, under the quarter seal,  
 dated and sealed last, do hereby pro-  
 claim the foresaid brieves, whereof a just copy is  
 hereto prefixed, to be served before the said macers  
 of session, or any two of them, as sheriffs of the said  
 sheriffdom of within the Parliament or  
 New Session-house of Edinburgh, upon the  
 day of next to come, in the hour of  
 cause, with continuation of days; and warn and sum-  
 mon all persons having, or pretending interest, to  
 compear, place and time foresaid, to hear and see the  
 said brieves served, or to object thereagainst; and  
 certify them, if they fail, the said macers, as sheriffs  
 foresaid, will proceed in the service of the said  
 brieves, conform to the tenor thereof, and commis-  
 sion to them for that effect. This I do, at the mar-  
 ket-cross of , head-burgh of the said  
 sheriffdom, upon the day of  
 before these witnesses and .”

*Execution to be indorsed on the Back of the Brieve, and signed by the Officer, Executor, and Witnesses.*

“ UPON the                      day of  
 years, being a market-day, within the burgh of  
 , I, P S, as officer appointed by the macers  
 of the session, as sheriffs of the said sherrifdom; and  
 at command, and by virtue of their precept to me in  
 that behalf, dated                      instant, passed to the  
 market-cross of                      , the said head-burgh  
 of                      , and thereat, between the hours of  
 eleven and twelve of the clock forenoon, and after  
 crying three several *oyes*, and public reading of the  
 within-written brieve, and of the said precept, I duly  
 and openly proclaimed the within brieve, to be served  
 before the said macers, or any two of them, as she-  
 riffs aforesaid, by virtue of his Majesty's commission  
 to them for that end, and that within the Parliament  
 or New Session-house of Edinburgh, the  
 day of                      next to come, in the hour of  
 cause, with continuation of days; and duly and law-  
 fully warned all persons having, or pretending to  
 have interest, to compear, time and place aforesaid,  
 with continuation, as said is, to hear and see the  
 within brieve served, or to object thereagainst; and  
 I made certification to them as effairs; and I affixed  
 and left upon the said market-cross, a schedule, con-  
 taining a copy of the within brieve, the date and  
 whole tenor of this my execution, and the names and  
 designations of the witnesses who were present there-  
 at, and are hereunto with me subscribing, viz. G S  
 and A D, both indwellers in                      .”



*The Form of the Report of the Commissioner, anent the  
verifying of the Execution of the Brieves.*

“ AT \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, the which day there was produced to \_\_\_\_\_ a commission of date the \_\_\_\_\_ given and signed by *D E*, &c. two of the four ordinary macers before the Lords of Council and Session, who, or any two of them, are appointed sheriffs in that part of the sheriffdoms of *L* and *R*, by his Majesty's commission under the quarter-seal, for serving of *A B* of *C* nearest lawful heir-male of the body of the deceased *J B* of *C*, his father, upon the \_\_\_\_\_ day of \_\_\_\_\_ next, within the Parliament-house of Edinburgh; by which commission the macers, as sheriffs in that part foresaid, for preventing the expense and trouble of bringing the officer who executes the brieves and witnesses to Edinburgh to depone before them, give full power and commission to the said \_\_\_\_\_, with power to him to name a clerk to take and receive the depositions of the officer, executor of the said brieves, and of the witnesses, upon the truth and verity of the executions, after the executions shall be openly read in their presence, and that at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, and to report the same, with the said commission, to the said macers, before the said \_\_\_\_\_ (the day on which the service is to be); which commission being accepted by the said \_\_\_\_\_, he made choice of \_\_\_\_\_ to be his clerk, who accepted of the said office, and gave his oath *de fidei administratione*.”

*The commissioner and clerk sign this.*

“ Thereafter compeared \_\_\_\_\_ officer, and executor of the brieves directed forth by his Majesty's Chancery, for serving of the said *A B* of *C* nearest lawful heir-male to the said *J B* of *C*, his father, and being solemnly sworn and interrogated by, and in

presence of, the said commissioner, and the two brieves, and executions on the back thereof, being openly read in his presence, depones, That he executed the said two brieves in the precise terms of the executions on the back of the same, signed by him and the witnesses who were present thereat, at the several market-crosses following, viz. at the market-cross of *R*, head-burgh of the sheriffdom thereof, the

day of

being the ordi-

nary weekly market-day of the burgh of *R*, [*and say the like as to the other burgh*], and which days are the true dates of the executions of the said brieves, signed by the deponent, commissioner, and clerk.

“ As also compeared, [*blank for the designations and names of the two men who are witnesses*], and being both solemnly sworn and interrogated by, and in presence of, the said commissioner, and the before mentioned two brieves, and executions thereof, being openly read in their presence, depone, That they were present with, and heard and saw the said

[*the officer's name*], officer, execute the said two brieves, in the precise terms of the executions of the same on the backs thereof, signed by him as officer, and the deponents as witnesses thereto; and that the said two brieves were executed at the said two several market-crosses of *R* and *L*, upon the several days mentioned in the said

officer his deposition before written, being the ordinary market-days of the said several burghs, and which days are the true dates of the executions of the said brieves. And the above is the truth, as they shall answer to God. Signed by the deponents, commissioner, and clerk.

“ At the day of ,

What is contained in the preceding pages, is the report of the commission before mentioned, signed by the commissioner and clerk; and the same, with the said commission, is returned to the macers of session.”

*This signed by the commissioner and clerk.*

After the day to which the court was adjourned is come, the court again meets ; and if the officers be not returned, with their executions and witnesses, or any accident happen, which renders it either impossible or inconvenient to have the brieves served that day, the court must again be adjourned ; but this is so very easy in form, that it is needless to set it down : only observe, that a title is to be prefixed to the acts of court that day, the same as in the following acts ; and after mentioning the court to be met, and the day and place, as is therein done, let either the procurator, judge, or any other member of court, set forth why the court cannot so conveniently proceed ; and then let the judges continue and adjourn the court to any proper day, wherein all parties, jurors, witnesses, officers, dempsters, and members of court are ordained to be present ; on which the procurator is to take instruments, and the continuation is to be signed by the judges : but if there be no occasion for an adjournment, a jury is to be chosen and sworn, and the brieves verified, and all parties openly cited, and the claim presented to the jurors or assizers, and the same verified, and the jury are to give their verdict thereon ; all which is set forth in the acts of the second court.

Follows the form of the oaths.

*Oath to a Juryman.*

“ BY God, &c. You promise to be faithful in this inquest.”

*Oath to the Officer, Executor of the Brieve, if present in Court.*

“ BY God, &c. You did proclaim and execute the brieve, in such manner as is mentioned in the indorsation thereof, signed by you. And this is truth, as ye shall answer to God.”

*Oath to the Witnesses who were present at executing, if present in Court.*

“ BY God, &c. You heard, and saw, and stood by, when the said \_\_\_\_\_, officer, proclaimed and executed the brieve, in such manner as is mentioned in the indorsation thereof, signed by you. And this is truth,” *ut supra*.

*Oaths of Witnesses, for Proof of the Claim, who must be present in Court.*

“ *A* and *B* being solemnly sworn, examined, and interrogated, depone *affirmative* to the propinquity of the claimant, and the time of his father’s death.”

*This last to be signed by the witnesses, and wrote upon the margin of the claim.\**

*Citation by the Officer in Court, and at the Door of the Court-house.*

“ OYES, oyes, oyes: If there be any person or persons who have any thing to object against the service of the brieves purchased forth of our Sovereign Lord’s Chancery, by *A B* of *C*, for cognoscing him nearest and lawful heir-male of the body of the deceased *J B* of *C*, his father, in all lands and heritages wherein his said father died infest, let them come forth and they shall be heard. Once, twice, thrice.”

*Nota.* This citation is called two several times in presence of the macers, (judges), and the inquest; after which it is called a third time at the outer door of the Parliament-house; and it is usual, if there be

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\* The jurymen may be witnesses as to the propinquity.

no objection made to the service, to take instruments in the hands of the clerk to the service, on that fact.

*Claims of A B as Heir in special of the deceased J B of C, his Father.*

“ HONOURABLE persons, and good men of inquest, unto your wisdoms says *A B of C*, eldest lawful son of the deceased *J B of C*, that the deceased *J B of C*, my father, died last vest and seised, at the faith and peace of our Sovereign Lord George III, now reigning, in the fee of all and whole the lands and barony of *C*, comprehending the lands and others after-mentioned, viz. [*Here take in the lands*], conform to a charter of resignation of the said lands and others, dated \_\_\_\_\_, and sealed \_\_\_\_\_, and granted by his late Majesty George II, under the great seal, in favour of the said deceased *J B of C*, my father, and the heirs-male lawfully to be procreate of the body of the said *J B*; whom failing, [*Here take in the substitution; and in case the lands be tailzied, after taking in the substitution, you will insert the conditions, &c.*], specially after mentioned, contained in a bond of tailzie granted by \_\_\_\_\_, &c. (as the case is), and registrate in the register of tailzies the \_\_\_\_\_, viz. with this provision, &c. as in the said tailzie, and charter foresaid following thereon, more fully is contained, dated \_\_\_\_\_, registrate \_\_\_\_\_ heritably and irredeemably; and by which charter, a seisin, to be taken at the manor-place of *C*, is declared and ordained to be a valid and sufficient seisin for the whole lands, mills, and others before specified, united and erected into the said barony, as said is, and notwithstanding of their lying discontinuous, and within different jurisdictions; and that I am eldest lawful son, and nearest lawful heir-male of the body of the said deceased *J B*, my father, in the said lands and barony of *C*, comprehending and lying as aforesaid; and that

I am of lawful age; and that the said lands and barony of *C*, comprehending and lying as aforesaid, are now worth, and were worth, in the time of peace, the sums particularly after mentioned, viz. [*Here take in the old extent of every parcel of lands particularly*]; and that the said lands of \_\_\_\_\_ are holden of his Majesty, and his royal successors, [*Here take in the manner of holding, and the feu and other duties payable*]; and that the said lands and barony are now in the hands of the said respective immediate lawful superiors of the same, by reason of non-entry, through the decease of the said *J B* of *C*, my father, who deceased in the month of \_\_\_\_\_, and so have remained in the hands of the said superiors thereof, for the space of \_\_\_\_\_ months, or thereby, by reason of my not presenting my just right thereto, as nearest and lawful heir of my said father. Herefore, I beseech you to cognosce and serve me nearest and lawful heir of the said deceased *J B* of *C*, my father, (as being eldest son of his body), in all and whole the said lands and barony of *C*, comprehending and lying as aforesaid; and return the said service to his Majesty's Chancery, under the most part of your seals, as use is. According to justice, and your wisdoms answer."

The claim is signed by the procurator, or by the claimant himself, if present.

The names of the persons of inquest are written upon the claim, and ranged in three columns, five in each column. Below their names the verdict is written, in this form.—

*Their Verdict.*

" AT Edinburgh, the \_\_\_\_\_ day of \_\_\_\_\_

The whole persons of inquest before named, being all solemnly sworn and admitted to pass upon the service of the briefes issued forth of his Majesty's

Chancery, for inquiring into the foresaid claim; and having all heard, seen, and considered the claim before written, with the writs produced, and testimonies adduced in court, for instructing thereof, and no person objecting, albeit legally cited, thrice called, and lawful time of day waited, they, all in one voice, and without variance, find the claim before written sufficiently instructed and proven, and serve the said *A B*, claimant heir foresaid, conform to his said claim; and ordain the service to be retoured with the brieves to his Majesty's Chancery. In testimony whereof, these presents, and the claim, are, in their presence, and by their direction and consent, signed by the said \_\_\_\_\_, whom they had elected their chancellor."

*Second Court of the Service of the Two several Brieves issued forth of his Majesty's Chancery, and purchased by the said A B of C, for serving him nearest and lawful Heir-Male of the Body of the said deceased J B of C, his Father, continued to, and holden this \_\_\_\_\_ day of \_\_\_\_\_, within the Parliament or New Session-house of Edinburgh, by the before-named Four Ordinary Macers before the Lords of Council and Session, as Sheriffs of the said two several Sheriffdoms of N and O, specially constituted for that end, in virtue of his Majesty's Commission before specified, to them on that behalf directed.*

*Curia legitime affirmata.*

"IN presence of the said macers before named, as sheriffs foresaid, sitting in judgment, compeared the several worthy persons after named, who had been lawfully summoned before to pass upon the inquest of the foresaid brieves, as being least suspected, and who best know the verity; they are to say, [*Here take in their names as before directed*]; as also, compeared personally the said *D E*, as attorney specially

constituted to the effect before and after mentioned<sup>d</sup> by the said *A B* of *C*, conform to the procuratory and patent letters formerly mentioned, granted to him and others, jointly and severally, of the date before specified; and there in court the said attorney reproduced the two brieves before mentioned, directed to the said macers, or any two of them, as sheriffs of the said sheriffdoms of *N* and *O*, for cognoscing the said *A B* of *C*, nearest and lawful heir-male of the body of the said deceased *J B* of *C*, his father, as aforesaid; together with the said macers their precept, ordaining the officers of court before named to proclaim and execute the said brieves, and together also with the two separate executions of the said two brieves on the back thereof respectively, under the hand of the said *R F*, one of the officers of court, and of the said *P T* and *R L*, as witnesses thereto, bearing the said *D E*, officer, to have passed to the market-cross of                      head-burgh of the sheriffdoms thereof, upon the                      day of                      last; and to the market-cross of *N*, head-burgh of the sheriffdoms thereof, upon the                      day of the same month of                      last, being the respective market-days of the said two burghs, and there, at each of the said market-crosses, and at the time of public market, to have duly and lawfully proclaimed and execute the said two brieves, in manner directed by the said judges their precept; and which two brieves, with the executions thereof, and precept foresaid, being delivered by the said attorney to the clerk of court, the said judges caused the said two brieves, with the respective executions thereof, to be audibly and publicly read: after reading thereof, the said *D E*, officer, who did execute the said brieves, and the said *P T* and *R L*, witnesses, who were present at the execution thereof as aforesaid, did give their oath anent the truth of the said respective executions; and who being solemnly and judicially sworn, deponed, that the said two brieves, and each of them, were



truly and faithfully proclaimed and execute, conform to the respective executions thereof, in all points, as they should answer to God: Whereupon the said judges found, that the said briefes were duly and lawfully executed and proclaimed. Thereafter, the said attorney exhibited and produced a claim for the said *A B* of *C*, beseeching that he might be cognosed nearest and lawful heir-male of the body of the deceased *J B* of *C*, his father, (in special), in all and singular the lands, and other heritages therein specified, and in fee whereof his said father died last vest and seised, at the faith and peace of our Sovereign Lord: and that the service of the said briefes might be returned to his Majesty's Chancery, in full and proper form. And for verifying the said claim, the said attorney produced, in presence foresaid, the writs after mentioned, viz. charter under the great seal, &c. of the lands and barony of *A*, comprehending, lying, and to be holden, as in the said claim is set forth, in favours of \_\_\_\_\_ in liferent, and the said *J B* of *C*, his eldest son, and father to the claimant, in fee, and the heirs-male of his body, &c. dated \_\_\_\_\_ sealed \_\_\_\_\_ with the instrument of seisin following thereon, in favours of the said \_\_\_\_\_ in liferent, and the said *J B* younger, in fee, dated \_\_\_\_\_ and recorded at \_\_\_\_\_

: as also, for proving the old extent, a charter or retour, &c. [*Here they are taken in*]: as also, for proving the deduction of a part of the barony made in the said claim, a charter, &c. in favours of \_\_\_\_\_ upon the resignation of \_\_\_\_\_

dated \_\_\_\_\_ and sealed \_\_\_\_\_. And after production of all which claim and writs, the said macers, as judges foresaid, caused the said *T F*, officer of court, call peremptorily and openly in judgment, all parties having, or pretending to have, interest; and none compearing to object against the said briefes, and lawful time of day being waited, the said attorney protested *contra omnes non comparentes*,

that they might be silent for ever hereafter ; and also desired, that the said claim, writs produced, and testimonies to be adduced for verifying the said claim, might be referred and admitted to the knowledge of the inquest before named : and the said macers, as judges foresaid, finding his desire to be just and reasonable, they admitted thereof, and remitted the said matter to the knowledge of the foresaid inquest ; and who being all solemnly sworn by the said judges, made faith *de fidei administratione* ; and they unanimously elected the said Sir *M S* to be their chancellor ; and thereupon the said claim was openly and publicly read, and compared with the foresaid writings and infestments produced for vouching and verifying thereof. [*Instead of this, the propinquity, when proven by witnesses, must be here mentioned to have been so done*]. And the majority of the persons of inquest publicly owned and declared their knowledge of the claimant's propinquity of blood to his said father, as set forth in the said claim. And thereafter, the said macers, as judges foresaid, caused the said *T F*, officer, call again thrice peremptorily, at the most patent door of the said New Session-house, all parties having, or pretending to have interest ; and none compearing to object, the said *D E*, attorney foresaid, again protested *contra omnes non comparentes* ; and that they might for ever hereafter be silent. And then they, the said worthy persons of the inquest, all with one voice, and without variance, by the mouth of their said chancellor, found the foresaid claim sufficiently verified and instructed ; and, therefore, served and cognosced the said *A B* of *C*, nearest and lawful heir to his said father, in special, in the several lands and other heritages, wherein his said father died last vest and seised ; and that conform to the said claim, and the verdict of the said inquest subjoined thereto, and signed by the said chancellor, in all points ; and ordained the said service, with the said two brieves, and under the clerk of the court his hand, to be returned to his



quod quond. *J B* de *C*, pater *A B* nunc de *C*, obiit ultimo vestitus et sasitus ut de feodo ad fidem et pacem S. D. N. Regis, in totis et integris terris et baronia de \_\_\_\_\_ et quod dictus *A B* est legitimus et propinquior hæres dicti quondam *J B* sui patris, in dict. terris aliisque, jacen. et bondat. ut supra, et quod est legitimæ ætatis; et quod predictæ terræ, cum pertinentibus, valent nunc per annum \_\_\_\_\_, et valuerunt tempore pacis

\_\_\_\_\_ ; et quod prædictæ terræ, decimæ, aliaque prædict. cum pertinen. immediate tenentur de S. D. N. Rege, ejusque successoribus, in alba-firma, pro annua solutione divoriarum subscript. viz. [*Here tale in the reddendo as in the documents*]: et quod dict. terræ \_\_\_\_\_ aliaque prædict. nunc existant, et extitere in manibus S. N. D. Regis, ejusque prædecessorum, tanquam immediatorum legitimorum superiorum eorundem, a decessu quondam *J B*, patris *A B*, qui decessit \_\_\_\_\_ die mensis \_\_\_\_\_ anno Domini \_\_\_\_\_ et sic pro spatio

\_\_\_\_\_ annorum \_\_\_\_\_ mensium, aut coecirca, ratione dict. *A B*, proximi et legitimi hæredis dicti *J B*, jus ejus legale adhuc non prosecuti. In cujus rei testimonium, sigilla quorundam qui dict. inquisitione intererant, cum brevibus regis, una cum clausis ac sigillis dict. clavigerorum tanquam vicecomitam ante dict. sunt appensa, una cum subscriptione manuali Mri. *H C*, signeto regio nostro clerici et Notarii-publici, ac deservitionis dict. brevium curiæ clerico, apud Edinburgum, dict. \_\_\_\_\_ dict. \_\_\_\_\_ mensis \_\_\_\_\_ anno \_\_\_\_\_

Præmissa supra hac et præcedent. \_\_\_\_\_ paginis, scripta vera esse attestor ego dict. Mr. *H C*. Sic subscribitur, *H C*, *N P*, et *C S*."

This service, when written out and signed by the clerk of court, who must be a writer to the signet, as well as a Notary-public, is carried to the Chancery-office, which is called retouring the service, and is

wrote over and ingrossed in Chancery hand, and then given out to the party along with the precept, directed to the sheriff or steward of any one county or stewartry, to give infeftment for the whole, in virtue of the dispensing clause contained in the charters of the lands; and this infeftment, when recorded, vests the estate of the predecessor completely in the person of the heir.



## APPENDIX.

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TABLE OF STAMP DUTIES applicable to the Present Work, and presently in Force by the Act of the 48th Year of the Reign of George III, Chapter 149.

INLAND BILL of exchange, draft, or order, for the payment to the bearer, or to order, either on demand, or otherwise, of any sum of money,

|                                             |      |    |   |
|---------------------------------------------|------|----|---|
| Amounting to 40s. and not exceeding 5l. 5s. | L. 0 | 1  | 0 |
| Exceeding 5l. 5s. and not exceeding 30l.    | 0    | 1  | 6 |
| Exceeding 30l. and not exceeding 50l.       | 0    | 2  | 0 |
| Exceeding 50l. and not exceeding 100l.      | 0    | 3  | 0 |
| Exceeding 100l. and not exceeding 200l.     | 0    | 4  | 0 |
| Exceeding 200l. and not exceeding 500l.     | 0    | 5  | 0 |
| Exceeding 500l. and not exceeding 1,000l.   | 0    | 7  | 6 |
| Exceeding 1,000l. and not exceeding 3,000l. | 0    | 10 | 0 |
| Exceeding 3,000l.                           | 1    | 0  | 0 |

Inland bill, draft, or order, for the payment of any sum of money, though not made payable to the bearer or to order, if the same shall be delivered to the payee, or some person on his or her behalf, the same duty as on a bill of exchange for the like sum, payable to bearer or order.

Inland bill, draft, or order, for the payment of any sum of money, weekly, monthly, or at any other stated periods, if made payable to the bearer, or to order, or if delivered to the payee, or some person on his or her behalf; where the total amount of the money thereby made payable shall be specified therein, or can be ascertained there-

from, the same duty as on a bill payable to bearer or order, for a sum equal to such total amount.

And where the total amount of the money thereby made payable shall be indefinite, the same duty as on a bill for the sum therein expressed only.

And the following instruments shall be deemed and taken to be inland bills, drafts, or orders, for the payment of money within the intent and meaning of this schedule, and of the foregoing act, viz.

All drafts or orders for the payment of any sum of money, by a bill or promissory-note, or for the delivery of any such bill or note, in payment or satisfaction of any sum of money; where such drafts or orders shall require the payment or delivery to be made to the bearer, or to order, or shall be delivered to the payee, or some person on his or her behalf:

All receipts given by any banker or bankers, or other person or persons, for money received, which shall entitle, or be intended to entitle, the person or persons paying the money, or the bearer of such receipts, to receive the like sum from any third person or persons:

And all bills, drafts, or orders for the payment of any sum of money, out of any particular fund, which may or may not be available; or upon any condition or contingency, which may or may not be performed or happen; if the same shall be made payable to the bearer or to order, or if the same shall be delivered to the payee, or some person on his or her behalf:

Foreign bill of exchange, (or bill of exchange drawn in but payable out of *Great Britain*), if drawn singly, and not in a set; the same duty as on an inland bill of the same amount and tenor.

Foreign bills of exchange, drawn in sets according to custom of merchants; for every bill of each set, where the the sum made payable thereby shall not exceed 100l.

L. 0 1 0

And where it shall exceed 100l. and not exceed 200l.

0 2 0

And where it shall exceed 200l. and not exceed 500l.

0 3 0

And where it shall exceed 500l. and not exceed 1,000l.

0 4 0



And where it shall exceed 1,000l. and not  
 exceed 3,000l. - - - L. 0 5 0  
 And where it shall exceed 3,000l. - - - 0 10 0

*Exemptions from the preceding and all other Stamp-Duties.*

All bills of exchange, or bank post-bills, issued by the Governor and Company of the Bank of England :

All bills, orders, remittance-bills, and remittance-certificates, drawn by commissioned officers, masters, and surgeons in the navy, or by any commissioner or commissioners of the navy, under the authority of the act passed in the thirty fifth year of his Majesty's reign, for the more expeditious payment of the wages and pay of certain officers belonging to the navy :

All bills drawn pursuant to any former act or acts of Parliament, by the commissioners of the navy, or by the commissioners for victualling the navy, or by the commissioners for managing the transport service, and for taking care of sick and wounded seamen, upon and payable by the treasurer of the navy :

All drafts or orders for the payment of any sum of money to the bearer on demand, and drawn upon any banker or bankers, or any person or persons acting as a banker, who shall reside or transact the business of a banker within ten miles of the place where such drafts or orders shall be drawn; provided such place shall be specified in such drafts or orders; and provided the same shall bear date on or before the day on which the same shall be issued; and provided the same do not direct the payment to be made by bills or promissory-notes :

All bills for the pay and allowances of his Majesty's land-forces, or for other expenditures liable to be charged in the public regimental or district accounts, which shall be drawn according to the forms now prescribed, or hereafter to be prescribed by his Majesty's orders, by the paymasters of regiments or corps, or by the chief paymaster or deputy paymaster and accountant of the army depot, or by the paymasters of recruiting districts, or by the paymasters of detachments, or by the officer or officers authorized to perform the duties of the paymastership, during a vacancy, or the absence, suspension, or incapacity of

any such paymaster as aforesaid; save and except such bills as shall be drawn in favour of contractors or others, who furnish bread or forage to his Majesty's troops, and who, by their contracts or agreements, shall be liable to pay the stamp-duties on the bills given in payment for the articles supplied by them.

PERSONAL BOND in Scotland, given as a security for the payment of any definite and certain sum of money,

|                                               |   |   |   |      |    |   |
|-----------------------------------------------|---|---|---|------|----|---|
| Not exceeding 100l.                           | - | - | - | L. 1 | 0  | 0 |
| Exceeding 100l. and not exceeding 300l.       | - | - | - | 1    | 10 | 0 |
| Exceeding 300l. and not exceeding 500l.       | - | - | - | 2    | 0  | 0 |
| Exceeding 500l. and not exceeding 1,000l.     | - | - | - | 3    | 0  | 0 |
| Exceeding 1,000l. and not exceeding 2,000l.   | - | - | - | 4    | 0  | 0 |
| Exceeding 2,000l. and not exceeding 3,000l.   | - | - | - | 5    | 0  | 0 |
| Exceeding 3,000l. and not exceeding 4,000l.   | - | - | - | 6    | 0  | 0 |
| Exceeding 4,000l. and not exceeding 5,000l.   | - | - | - | 7    | 0  | 0 |
| Exceeding 5,000l. and not exceeding 10,000l.  | - | - | - | 9    | 0  | 0 |
| Exceeding 10,000l. and not exceeding 15,000l. | - | - | - | 12   | 0  | 0 |
| Exceeding 15,000l. and not exceeding 20,000l. | - | - | - | 15   | 0  | 0 |
| Exceeding 20,000l.                            | - | - | - | 20   | 0  | 0 |

Personal or heritable bond in Scotland, given as a security for the payment of any annuity, (*except upon the original creation and sale thereof*), or of any sum or sums of money at stated periods, (*not being interest for any principal sum, nor rent reserved or payable upon any lease or tack*), for the term of life, or any other indefinite period, so that the whole money to be paid cannot be previously ascertained,

|                                                                             |   |   |   |      |    |   |
|-----------------------------------------------------------------------------|---|---|---|------|----|---|
| Where the annuity or sums secured shall not amount to 10l. per annum,       | - | - | - | L. 1 | 0  | 0 |
| And where the same shall amount to 10l. and not amount to 50l. per annum,   | - | - | - | 1    | 10 | 0 |
| And where the same shall amount to 50l. and not amount to 100l. per annum,  | - | - | - | 2    | 0  | 0 |
| And where the same shall amount to 100l. and not amount to 200l. per annum, | - | - | - | 3    | 0  | 0 |
| And where the same shall amount to 200l. and not amount to 300l. per annum, | - | - | - | 4    | 0  | 0 |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                  |   |      |   |   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|------|---|---|
| And where the same shall amount to 300l.<br>and not amount to 400l. per annum,                                                                                                                                                                                                                                                                                                                                                                   | - | L. 5 | 0 | 0 |
| And where the same shall amount to 400l.<br>and not amount to 500l. per annum,                                                                                                                                                                                                                                                                                                                                                                   | - | 6    | 0 | 0 |
| And where the same shall amount to 500l.<br>and not amount to 750l. per annum,                                                                                                                                                                                                                                                                                                                                                                   | - | 7    | 0 | 0 |
| And where the same shall amount to 750l.<br>and not amount to 1,000l. per annum,                                                                                                                                                                                                                                                                                                                                                                 | - | 9    | 0 | 0 |
| And where the same shall amount to 1,000l.<br>and not amount to 1,500l. per annum,                                                                                                                                                                                                                                                                                                                                                               | - | 12   | 0 | 0 |
| And where the same shall amount to 1,500l.<br>and not amount to 2,000l. per annum,                                                                                                                                                                                                                                                                                                                                                               | - | 15   | 0 | 0 |
| And where the same shall amount to 2,000l.<br>per annum, or upwards,                                                                                                                                                                                                                                                                                                                                                                             | - | 20   | 0 | 0 |
| But where there shall be both a personal and<br>heritable bond in <i>Scotland</i> , in separate<br>deeds of the same date, for securing any<br>such annuity, or sums payable at stated<br>periods, and the <i>ad valorem</i> duty above<br>charged thereon shall amount to 1l. 10s.<br>or upwards, the heritable bond only shall<br>be charged with the <i>ad valorem</i> duty,<br>and the personal bond shall be charged<br>only with a duty of | - | 1    | 0 | 0 |

*General Directions respecting Bonds.*

Where any bond as aforesaid, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, there shall be charged for every entire quantity of 1,080 words, contained therein, over and above the first 1,080 words, a further *progressive* duty of - - - L. 1 0 0

CERTIFICATE to be taken out yearly, by every person admitted or inrolled as a Notary-public in Scotland:

If he shall reside within the city or shire of *Edinburgh*,

and if he shall have been admitted, or been in possession of his office, for the space of three years or upwards, - - - L. 10 0 0

|                                                                                                                         |   |   |   |     |   |   |
|-------------------------------------------------------------------------------------------------------------------------|---|---|---|-----|---|---|
| Or if he shall not have been admitted or been<br>in possession so long,                                                 | - | - | - | L.5 | 0 | 6 |
| If he shall reside <i>elsewhere</i> ,                                                                                   |   |   |   |     |   |   |
| And if he shall have been admitted, or been<br>in possession of his office, for the space of<br>three years or upwards, | - | - | - | 6   | 0 | 0 |
| Or if he shall not have been admitted or been<br>in possession so long,                                                 | - | - | - | 3   | 0 | 0 |

|                                                                                                                                                                                                                                      |   |   |   |     |   |   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|-----|---|---|
| CHARTER of RESIGNATION, or of confirmation,<br>or of novodamus, or upon apprising, or upon<br>a decret of adjudication or sale, of any<br>lands, or other heritable subjects in <i>Scotland</i> ,<br>holden of any subject superior, | - | - | - | L.0 | 7 | 0 |
| And where the same shall contain 2,160<br>words or upwards, then for every entire<br>quantity of 1,080 words contained therein,<br>over and above the first 1,080 words, a fur-<br>ther <i>progressive</i> duty of                   | - | - | - | 0   | 7 | 0 |

|                                                                                                                                                                                                                                                                                                                                  |   |   |   |     |    |   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|-----|----|---|
| COMPOSITION—Deed or other instrument of<br>composition, between a debtor or debtors,<br>and his, her, or their creditors,                                                                                                                                                                                                        | - | - | - | L.1 | 10 | 0 |
| And where the same, together with any sche-<br>dule, receipt, or other matter, put or in-<br>dorsed thereon, or annexed thereto, shall<br>contain 2,160 words or upwards, then for<br>every entire quantity of 1,080 words con-<br>tained therein, over and above the first<br>1,080 words, a further <i>progressive</i> duty of |   |   |   | 1   | 0  |   |

CONVEYANCE of any kind or description whatsoever, upon  
the sale of any lands, tenements, rents, annuities, or other  
property, real or personal, heritable or moveable, or of  
any right, title, interest, or claim, in, to, out of, or upon  
any lands, tenements, rents, annuities, or other property:—  
That is to say, for and in respect of *the principal or one*  
*deed or instrument*, whereby the lands or other thing sold  
shall be granted, assigned, transferred, released, renounced,  
or otherwise conveyed to, or vested in, the purchaser or  
purchasers, or any other person or persons, by his, her,  
their direction.

|                                                                                                                                                                                                                                                                                                          |     |     |      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|------|
| And where the same, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further <i>progressive</i> duty of | L.1 | 0   | 0    |
| Where the purchase or consideration money, therein or thereupon expressed, shall not amount to 50l.                                                                                                                                                                                                      |     | 0   | 15 0 |
| And where the same shall amount to 50l. and not amount to 150l.                                                                                                                                                                                                                                          |     | 1   | 0 0  |
| And where the same shall amount to 150l. and not amount to 300l.                                                                                                                                                                                                                                         |     | 1   | 10 0 |
| And where the same shall amount to 300l. and not amount to 500l.                                                                                                                                                                                                                                         |     | 2   | 10 0 |
| And where the same shall amount to 500l. and not amount to 750l.                                                                                                                                                                                                                                         |     | 5   | 0 0  |
| And where the same shall amount to 750l. and not amount to 1,000l.                                                                                                                                                                                                                                       |     | 7   | 10 0 |
| And where the same shall amount to 1,000l. and not amount to 2,000l.                                                                                                                                                                                                                                     |     | 10  | 0 0  |
| And where the same shall amount to 2,000l. and not amount to 3,000l.                                                                                                                                                                                                                                     |     | 20  | 0 0  |
| And where the same shall amount to 3,000l. and not amount to 4,000l.                                                                                                                                                                                                                                     |     | 30  | 0 0  |
| And where the same shall amount to 4,000l. and not amount to 5,000l.                                                                                                                                                                                                                                     |     | 40  | 0 0  |
| And where the same shall amount to 5,000l. and not amount to 7,500l.                                                                                                                                                                                                                                     |     | 50  | 0 0  |
| And where the same shall amount to 7,500l. and not amount to 10,000l.                                                                                                                                                                                                                                    |     | 75  | 0 0  |
| And where the same shall amount to 10,000l. and not amount to 15,000l.                                                                                                                                                                                                                                   |     | 100 | 0 0  |
| And where the same shall amount to 15,000l. and not amount to 20,000l.                                                                                                                                                                                                                                   |     | 150 | 0 0  |
| And where the same shall amount to 20,000l. and not amount to 30,000l.                                                                                                                                                                                                                                   |     | 200 | 0 0  |
| And where the same shall amount to 30,000l. and not amount to 40,000l.                                                                                                                                                                                                                                   |     | 300 | 0 0  |
| And where the same shall amount to 40,000l. and not amount to 50,000l.                                                                                                                                                                                                                                   |     | 400 | 0 0  |

And where the same shall amount to 50,000l.

or upwards, - - - - L.500 0 0

Note.—The purchase or consideration money is to be truly expressed and set forth, in words at length, in or upon every such principal or only deed or instrument of conveyance.

And where any lands or other property, contracted to be sold at one entire price for the whole, shall be conveyed in separate parts or parcels, by different instruments, the purchase or consideration money shall be divided and apportioned, in such manner as the parties shall think fit, so that a distinct consideration, for each separate part or parcel, may be set forth in or upon the principal or only instrument of conveyance relating thereto.

And where any lands or other property shall be sold and conveyed, subject to any mortgage, bond, or other debt, or to any gross or entire sum of money, to be afterwards paid by the purchaser, such debt or sum of money shall be deemed part of the consideration, in respect whereof the said *ad valorem* duty is to be paid.

And where there shall be a disposition or assignation, executed by the seller, and any other instrument or instruments to complete the title, the disposition or assignation shall be deemed the principal instrument.

And where there shall be several deeds or instruments for completing the title to the property sold; such of them, as are not liable to the said *ad valorem* duty, shall be charged with the duty, to which the same may be liable, under any general or particular description of such deeds or instruments contained in the schedule of the act of Parliament.

COPY, attested, or EXTRACT, of any deed, instrument, or writing, given out from any public register, or from the books or records of any court in Scotland, -

L.0 2 0

And where the same shall contain more than 1,296 words, then for every entire quantity of 1,296 words contained therein, over and above the first 1,296 words, a farther progressive duty of - - -

0 2 0

And for any less quantity of words contained therein, over and above the first 1,296 words, or over and above any second, third, or other full quantity of 1,296 words, a further duty of L. 0 2 0

DISPOSITION of any lands or other property, heritable or moveable, in Scotland, or of any right or interest therein, *not otherwise charged in the schedule of the act of Parliament,* L. 1 10 0

And where the same, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of 1 0 0

FACULTY, LICENCE, or COMMISSION for admitting or authorizing any person to act as a Notary-public in Scotland, L. 20 0 0

LEASE, or tack of any lands, or heritable subjects, for a term not exceeding twenty-one years, at a yearly rent of 10*l.* or less, and without any fine or grassum paid for the same, L. 1 0 0

Lease, or tack of any lands, or heritable subjects for a life or lives, or for a term of years determinable with a life or lives, or for a term absolute, not exceeding forty years, in consideration of a fine or grassum paid for the same, not exceeding 20*l.* ;

If the rent reserved or stipulated shall not exceed 40*s.* 1 0 0

And if the rent reserved or stipulated shall exceed 40*s.* 1 10 0

Lease, or tack of any kind, *not otherwise charged in the schedule of the act of Parliament,* 1 10 0

|                                                                                                                                                                                                                                                                                                                                                   |          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| And for the counterpart or duplicate of any lease or tack, charged with a duty of 1l. the like duty of                                                                                                                                                                                                                                            | L. 1 0 0 |
| And for the counterpart or duplicate of any other lease or tack whatsoever,                                                                                                                                                                                                                                                                       | 1 10 0   |
| And where any such lease or tack, counterpart, or duplicate as aforesaid, together with any schedule, receipt, or other matter put thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further <i>progressive</i> duty of | 1 0 0    |

## EXEMPTIONS.

Leases or tacks of waste or uncultivated lands to any poor or labouring persons, for any term not exceeding three lives, or ninety-nine years, where the fine shall not exceed five shillings, nor the reserved rent one guinea per annum; and the counterparts or duplicates of all such leases.

|                                                                                                                                                                                                                                                                                                 |          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| LETTER, or POWER of ATTORNEY, and of any other kind; or commission or factory in the nature thereof,                                                                                                                                                                                            | L. 1 0 0 |
| And where the same, together with any schedule, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further <i>progressive</i> duty of | 1 0 0    |

MORTGAGE, conditional surrender by way of mortgage, further charge, wadset, and heritable bond; disposition, assignation, or tack, in security; and eik to a reversion; of or affecting any lands, estate, or property, real or personal, heritable or moveable, whatsoever:

Also any deed, containing an obligation to infest any person in an annualrent, or in lands or other heritable subjects in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained, for payment of the money or stock intended to be secured:



Also any conveyance of any lands, estate, or property whatsoever, in trust to be sold, or otherwise converted into money, which shall be intended only as a security, and shall be redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; *except where such conveyance shall be made, for the benefit of creditors generally, or for the benefit of creditors specified, who shall accept the provision made for payment of their debts, in full satisfaction thereof, or who shall exceed five in number :*

Also any defeazance, letter of reversion, or back-bonds, for defeating or making redeemable any conveyance, disposition, assignation, or tack, of any lands, estate, or property whatsoever, which shall be apparently absolute, but intended only as a security :

Also any agreement, contract, or bond, accompanied with a deposit of title-deeds, for making a mortgage, wadset, or any such other security or conveyance as aforesaid, of any lands, estate, or property comprised in such title-deeds, or for pledging or charging the same as a security :

And also any deed, whereby a real burden shall be declared or created on lands or heritable subjects in Scotland :

Where the same respectively shall be made, as a security for the payment of any definite and certain sum of money, advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable,

|                                               |   |   |   |     |    |   |
|-----------------------------------------------|---|---|---|-----|----|---|
| Not exceeding 50l.                            | - | - | - | L.0 | 15 | 0 |
| Exceeding 50l. and not exceeding 100l.        |   |   |   | 1   | 0  | 0 |
| Exceeding 100l. and not exceeding 150l.       |   |   |   | 1   | 10 | 0 |
| Exceeding 150l. and not exceeding 300l.       |   |   |   | 2   | 0  | 0 |
| Exceeding 300l. and not exceeding 500l.       |   |   |   | 3   | 0  | 0 |
| Exceeding 500l. and not exceeding 1,000l.     |   |   |   | 4   | 0  | 0 |
| Exceeding 1,000l. and not exceeding 2,000l.   |   |   |   | 5   | 0  | 0 |
| Exceeding 2,000l. and not exceeding 3,000l.   |   |   |   | 6   | 0  | 0 |
| Exceeding 3,000l. and not exceeding 4,000l.   |   |   |   | 7   | 0  | 0 |
| Exceeding 4,000l. and not exceeding 5,000l.   |   |   |   | 8   | 0  | 0 |
| Exceeding 5,000l. and not exceeding 10,000l.  |   |   |   | 10  | 0  | 0 |
| Exceeding 10,000l. and not exceeding 15,000l. |   |   |   | 12  | 0  | 0 |
| Exceeding 15,000l. and not exceeding 20,000l. |   |   |   | 15  | 0  | 0 |
| Exceeding 20,000l.                            |   |   |   | 20  | 0  | 0 |

And where the same respectively shall be made, as a security for the repayment of

money, to be thereafter lent, advanced, or paid, or which may become due upon an account-current, together with any sum already advanced or due, or without, as the case may be ;

If the total amount of the money secured, or to be ultimately recoverable thereupon, shall be uncertain and without any limit, L. 20 0 0

But if the total amount of the money secured, or to be ultimately recoverable thereupon, shall be limited not to exceed a given sum, the same duty as on a mortgage or wadset for such limited sum.

Where such deeds shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of - - - 1 0 0

NOTORIAL ACT, any whatsoever *not otherwise charged in the schedule of the act of Parliament*, - - - L. 0 5 0

And for every sheet or piece of paper, parchment, or vellum, upon which the same shall be written, after the first, a further *progressive* duty of - - - 0 5 0

PRECEPT of CLARE CONSTAT, to give seisin of lands or other heritable subjects in Scotland, - - - L. 0 7 0

And where the same shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of - - - 0 7 0

PROCURATION, deed, or other instrument of, L. 1 0 0

And where the same, together with any schedule or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein,

over and above the first 1,080 words, a further *progressive* duty of - - - L. 1 0 0

PROMISSORY-NOTE, for the payment to the bearer on demand, of any sum of money,

|                                             |      |   |   |
|---------------------------------------------|------|---|---|
| Not exceeding 1l. 1s. - - - - -             | L. 0 | 0 | 4 |
| Exceeding 1l. 1s. and not exceeding 2l. 2s. | 0    | 0 | 8 |
| Exceeding 2l. 2s. and not exceeding 5l. 5s. | 0    | 1 | 0 |
| Exceeding 5l. 5s. and not exceeding 20l.    | 0    | 1 | 6 |
| Exceeding 20l. and not exceeding 30l.       | 0    | 3 | 0 |
| Exceeding 30l. and not exceeding 50l.       | 0    | 4 | 6 |
| Exceeding 50l. and not exceeding 100l.      | 0    | 7 | 6 |

Which said notes for any sum, not exceeding 2l. 2s. may be reissued, after payment thereof, as often as shall be thought fit; and the said notes for any sum exceeding 2l. 2s. and not exceeding 100l. may be reissued from time to time after payment thereof, until the expiration of three years from the date thereof, but not afterwards.

Promissory-note, for the payment, in any other manner than to the bearer on demand, of any sum of money,

|                                             |   |   |    |
|---------------------------------------------|---|---|----|
| Amounting to 40s. and not exceeding 5l. 5s. | 0 | 0 | 10 |
| Exceeding 5l. 5s. and not exceeding 30l. -  | 0 | 1 | 6  |
| Exceeding 30l. and not exceeding 50l. -     | 0 | 2 | 0  |
| Exceeding 50l. and not exceeding 100l. -    | 0 | 3 | 0  |

These notes are not to be reissued, after being once paid.

Promissory-note, for the payment, either to the bearer on demand, or in any other manner than to the bearer on demand, of any sum of money,

|                                             |   |    |   |
|---------------------------------------------|---|----|---|
| Exceeding 100l. and not exceeding 200l. -   | 0 | 4  | 0 |
| Exceeding 200l. and not exceeding 500l. -   | 0 | 5  | 0 |
| Exceeding 500l. and not exceeding 1,000l.   | 0 | 7  | 6 |
| Exceeding 1,000l. and not exceeding 3,000l. | 0 | 10 | 0 |
| Exceeding 3,000l. - - - - -                 | 1 | 0  | 0 |

These notes are not to be reissued, after being once paid.

Promissory-note, for the payment of any sum of money by instalments, or for the payment of several sums of money, at different days or times, so that the whole of the money to be paid shall be definite and certain,—the same duty as on a promissory-note, payable after date, for a sum equal to the whole amount of the money to be paid.

And the following instruments shall be deemed and taken to be promissory-notes, within the intent and meaning of the act, viz.

All notes, promising the payment of any sum or sums of money out of any particular fund, which may or may not be available; or upon any condition or contingency, which may or may not be performed or happen; if the same shall be made payable to the bearer, or to order, and if the same shall be definite and certain, and not amount in the whole to 20l. :

And all receipts for money deposited in any bank, or in the hands of any banker or bankers, which shall contain any agreement or memorandum, importing that interest shall be paid for the money so deposited.

*Exemptions from the Duties on Promissory-Notes.*

All notes, promising the payment of any sum or sums of money out of any particular fund, which may or may not be available; or upon any condition or contingency, which may or may not be performed or happen; where the same shall not be made payable to the bearer or to order; and also where the same shall be made payable to the bearer or to order, if the same shall amount to 20l. or be indefinite :

And all other instruments, bearing in any degree the form or style of promissory-notes, but which in law shall be deemed special agreements, except those expressly directed by the act to be deemed promissory-notes :

But such of the notes and instruments exempted from the duty on promissory-notes, shall nevertheless be liable to the duty which may attach thereon, as agreements or otherwise.

*Exemptions from the Preceding and all other Stamp-Duties.*

All promissory-notes for the payment of money, issued by the Governor and Company of the Bank of England.

PROTEST of any bill of exchange or promissory-note, for any sum of money,

|                                                                                                                                                          |   |   |   |     |    |   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|-----|----|---|
| Not amounting to 20l.                                                                                                                                    | - | - | - | L.0 | 2  | 0 |
| Amounting to 20l. and not amounting to 100l.                                                                                                             | - | - | - | 0   | 3  | 0 |
| Amounting to 100l. and not amounting to 500l.                                                                                                            | - | - | - | 0   | 5  | 0 |
| Amounting to 500l. or upwards,                                                                                                                           | - | - | - | 0   | 10 | 0 |
| Protest of any other kind,                                                                                                                               | - | - | - | 0   | 5  | 0 |
| And for every sheet or piece of paper, parchment, or vellum, upon which the same shall be written, after the first, a further <i>progressive</i> duty of | - | - | - | 0   | 5  | 0 |

RECEIPT or DISCHARGE, given for or upon the payment of money,

|                                                                                                                        |     |   |   |
|------------------------------------------------------------------------------------------------------------------------|-----|---|---|
| Amounting to 2l. and not amounting to 10l.                                                                             | L.0 | 0 | 2 |
| Amounting to 10l. and not amounting to 20l.                                                                            | 0   | 0 | 4 |
| Amounting to 20l. and not amounting to 50l.                                                                            | 0   | 0 | 8 |
| Amounting to 50l. and not amounting to 100l.                                                                           | 0   | 1 | 0 |
| Amounting to 100l. and not amounting to 200l.                                                                          | 0   | 2 | 0 |
| Amounting to 200l. and not amounting to 500l.                                                                          | 0   | 3 | 0 |
| Amounting to 500l. or upwards,                                                                                         | 0   | 5 | 0 |
| And where any sum of money whatever, shall be therein expressed or acknowledged to be received in full of all demands, | 0   | 5 | 0 |

And any note, memorandum, or writing whatsoever, given to any person, for or upon the payment of money, whereby any sum of money, debt, or demand, or any part of any debt or demand, *therein specified*, and amounting to 2l. or upwards, shall be expressed or acknowledged to have been *paid, settled, balanced, or otherwise discharged or satisfied*, or which shall import or signify any such acknowledgment, and whether the same shall or shall not be signed with the name of any person, shall be deemed and taken to be a *receipt for a sum of money*, of equal amount with the sum, debt, or demands, so expressed or acknow-

ledged to have been paid, settled, balanced, or otherwise discharged or satisfied, within the intent and meaning of the act, and shall be charged with a duty accordingly.

And any receipt or discharge, note, memorandum, or writing whatever, given to any person, for or upon the payment of money, which shall contain, import, or signify any general acknowledgment of any debt, account, claim, or demand, debts, accounts, claims, or demands, *whereof the amount shall not be therein specified*, having been paid, settled, balanced, or otherwise discharged or satisfied, or whereby any sum of money therein mentioned shall be acknowledged to be received, in full, or in discharge or satisfaction of any such debt, account, claim, or demand, debts, accounts, claims, or demands, and whether the same shall or shall not be signed with the name of any person, shall be deemed and taken to be a *receipt for the sum of 500*l.* or upwards*, within the intent and meaning of the act; and shall be charged with the duty of 5*s.* accordingly.

And all receipts, discharges, and acknowledgments of the description aforesaid, which shall be given for or upon payments made by or with any bills of exchange, drafts, promissory-notes, or other securities for money, shall be deemed and taken to be receipts given upon the payment of money, within the intent and meaning of the act.

RESIGNATION; principal or original instrument of resignation, or service, or cognition of heirs, or charter, or seisin, of any houses, lands, or other heritable subjects, in Scotland, holding burgage, or of burgage tenure,

L.0 7 0

Resignation,—instrument of resignation of any lands or other heritable subjects, in Scotland, not of burgage tenure,

0 7 0

And where any of the said instruments shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of

0 7 0

SEISIN—Instrument of seisin, given upon any charter, precept of *clare constat*, or precept from Chancery, or upon any wadset, heritable bond, disposition, apprising, adjudication, or otherwise, of any lands or heritable subjects in Scotland, not of burgage tenure, - - - - - L. 0 7 0

And where the same shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of - - - 0 7 0

## FEES of NOTORIAL INSTRUMENTS, as presently in observance by Practitioners in Edinburgh.

### 1. Fees for taking Infestments.

These fees are regulated according to the value of the property over which the infestment is taken, or the amount of the sum in the bond on which it follows.

|                                         |          |
|-----------------------------------------|----------|
| When the sum does not exceed 1,000l.    | L. 1 1 0 |
| Above 1,000l. and not exceeding 2,000l. | 2 2 0    |
| Above 2,000l. and under 5,000l. -       | 3 3 0    |
| Above 5,000l. and under 10,000l. -      | 4 4 0    |
| 10,000l. and upwards, - - -             | 5 5 0    |

Besides travelling expenses, and a charge for the time occupied in the business, if the property over which the infestment is taken is at a distance from Edinburgh.

### 2. -Protesting Bills.

|                                                       |          |
|-------------------------------------------------------|----------|
| Protesting a bill payable in Edinburgh, if under 30l. | L. 0 2 6 |
| — - - - -                                             | 0 3 0    |
| 30l. and under 100l. - - - -                          | 0 4 0    |
| 100l. and under 200l. - - - -                         | 0 5 0    |
| 200l. and upwards, - - - -                            |          |

Noting bills one-half of the dues of a protest.

### 3. *Other Notorial Instruments, Certificates, &c.*

Drawing the schedule where such is necessary, the regulation fees of memorials.

And for extending and attesting the instrument,

|                      |   |   |   |      |   |   |
|----------------------|---|---|---|------|---|---|
| For the first sheet, | - | - | - | L. 0 | 2 | 6 |
| For every other,     | - | - | - | 0    | 1 | 6 |

Besides allowance for time, and travelling expenses.

For every notorial certificate or attestation where no schedule is required, the same fees as for the schedule and instrument.

### 4. *Notorial Copies of Papers.*

Notorial copies of papers are charged at the rate of 2s. 6d. for the first sheet, and 1s. 6d. for every other sheet, including dues of the certificate.



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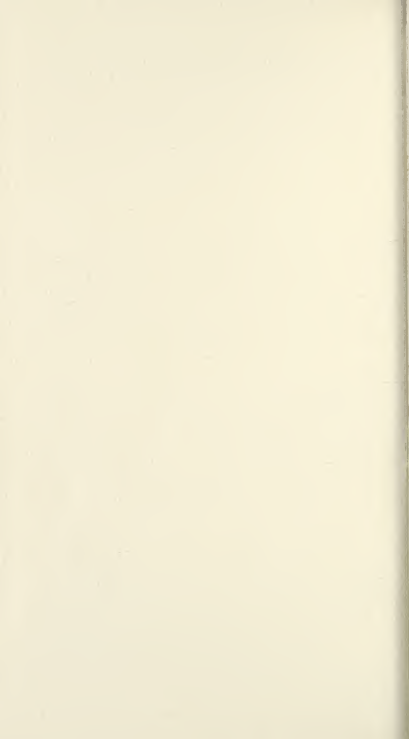
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