

estate even while their father is in life. Which was well decided; because it is presumed to be bought with the father's means.

See *Mascardus de Probationibus, verbo, Bona conclusione, 221.*

*Act. Cunyghame.*

*Alt. Lockhart.*

*Advocates' MS. folio 59.*

1668. *February 4.*

Anent WARDHOLDINGS.

As vassals of ward-lands may feu their lands without their superior's consent, so they who hold lands ward of subjects may do the same; albeit, the act of Parliament be only express as to lands holding ward of the king.

*Act. Wallace.*

*Alt. Lockhart.*

*Advocates' MS. folio 59.*

1668. *February 4.*

Anent COMMONTIES.

THE Laird of Haining being infeft in the lands of Haining, with its parts and pertinents, *cum pascuis et pasturis*, but not *cum communi pastura*; holding feu of the king; and the town of Selkirk, by their charter of erection, granted to them by the king, being specially infeft in the muir, as the commonty of their town: and both pursuing molestations against others,

The Lords found that Haining being infeft *cum pascuis, &c.* and in possession of pasturage past memory of man, he had right to pasture there, but not to cast feal and divot. But if he had been infeft *cum communi pastura*, and so in possession, The Lords declared, that having right of pasturage, the right of casting had been included; because *major servitus includit minorem*: and that *cum pascuis, &c.* in Haining's charter, did relate to the lands, but not to the commonty.

*Act. Wallace.*

*Alt. Wedderburne.*

*Advocates' MS. folio 59.*

1668. *February 24.*

HENDERSON *against* HENDERSON.

HENDERSON having disponed some tenements of land to another, so called; in the narratory part of the which disposition, the consideration of his mortality, and his going off the country are the impulsive causes of the right: and it had the common style of a testament; but thereafter, in the body of it, he assignees him to the mails and duties, and gives him power to dispone thereon; and contains