

1671. *January 10.*

THE Advocates at last having boated on the 10th of January, 1671, they having made a secession for some weeks because of the regulations, we return to our former observes.

Advocates' MS. folio 85.

1671. *January 12.*

Row against COUPAR.

THIS Row being in Galloway, and hearing that this defender was going for Edinburgh, he desires him to take in with him a horse to Peter Mell, and deliver it to him, which he accordingly did, but the horse within very few days after died. Coupar being pursued for the price of the horse, in regard it died by his default, he having jaded and spoiled it by the way; whereas, conform to the trust reposed in him, he should have delivered it as sound as when he received it. His defence was, he being *nudus negotiorum gestor*, he could not be liable for any accidents that befel the horse, after he was out of his possession, and consequently not for his death, that being *casus fortuitus* which *in nullo contractu præstatur*; and that he had the internal sickness on him, whereof after he died, before he was delivered to him, he proved by a testificate of a ferrier who saw the horse before that time.

Act. _____

Alt. M'Kenzie, elder.

Advocates' MS. No. 103, folio 85.

1671. *January 12.*

FUTT against LORD RUTHVEN.

THIS was a pursuit for count and reckoning, at a tenant's instance against his master; wherein, *Imo*, the penalty of a tack set by my Lord to him being craved, in regard my Lord had set these very same acres to another; it was REPLIED, He could not be heard to crave that failyie now, because the tack was now expired, and he had ever paid him the tack duty without any reservation or reclaiming against the same.

It went to interlocutor whether this was a passing from the failyie or no. I think it was.

2do, He CRAVED defalcation of _____ acres, in regard by inundation they were taken away from him, and *alluvione* were adjected to my Lord's lands on the other side; so that he reaped the benefit thereof, by shearing the grass and mowing the hay that grew thereon.

My Lord Castlehill found an inundation only not relevant, unless it had been such as had occasioned a total sterility, *l. 15, p. 2 and 3, D. locati*: but for the last part anent the alluvion, he sustained it relevant.

Act. _____

Alt. Spotswood.

Advocates' MS. No. 104, folio 85.