

the rent they pay, they will forsake the ground and leave it waste, and none will take it on those terms they had it ; for his own security that he be not made countable, either by the debtor or co-creditors, for the rental the land was at when he entered, and lest it be obtruded he had not power to give the tenants any thing down of what they paid, or set the land cheaper than he found, his safest course will be to cause intimate, by the space of three sundays, at the kirk doors of four or five of the most adjacent parish churches, that he is about to set such and such lands lying in such a parish, &c. for payment of the yearly duty of , and if there be any person who will be willing to pay more than what he is to set it for to the present tenants, let them come and they shall have it. Which solemnity being done, and none appearing to offer, he may then without hazard set it as he can best agree, with the least diminution and prejudice to the heritor that he can. And this was used by Sir William Dick's creditors in the lands of North Berwick.

I think this course should be taken by all who have not *plenum dominium*, but may be drawn to an account, as tutors and the like ; or they may crave this by a bill given in to the Session. See *27th of January, 1680, Clelland and Laminton ; item 15th February, 1681, Littlejohns. Advocates' MS. No. 234, folio 107.*

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Anent a BASTARD'S TESTAMENT.

As for that rule of law, *Bastardus non habet testamenti factionem*, I think it only militates in the case where he has no children procreated in lawful marriage; in which case, without a letter of legitimation, he cannot prejudge the king or his fisk by way of testament ; (for he may lawfully dispoise either moveables or unmoveables in his *liege poustie* ;) but where he has lawful bairns, he may certainly test upon his moveables, and name his bairns executors to him, (*Queritur*, if he may name strangers,) since they would succeed to him *ab intestato* in these goods. *Vide infra, February, 1676, No. 471, § 7, Lord Colville.*

*Advocates' MS. No. 235, folio 107.*

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1671. *November.*

THE beginning of this session, the Lords appointed what processes had been seen the summer, should not be seen again in this winter session, but come in according to the order of their enrolment ; notwithstanding the act of sederunt of the 8th of November, 1665, ordering processes seen in the summer to be seen again in the winter, but not *e contra* ; which act they hereby abrogate.

*Advocates' MS. No. 237, folio 108.*