

a nearer possible ;) within the same space, or rather, he giving his own personal bonds and engagements to the creditors for their debts. See sundry excellent clauses of tailyies in a Style-book beside me. *Vide* Cujacium, in *Paratitlo ad Tit. Cod. Qui admitti ad bonorum possessionem*, where he shews, *Quod testator additioni diem prestituere potest*.

Some superiors, when they give charters to their vassals, (particularly Argyle, &c.) they make themselves heirs of tailyie to their vassals in the third or fourth place, degree, and order of substitution; by which oft they fall to succeed in the property. But the vassals may alter it by a second bond of tailyie, or by granting a bond, whereon the lands may be apprised from them.

*Supra*, at No. 548, in Melvill and the Chancellor's case, I have remarked a very loyal clause was in the former Dukes of Hamilton their charters. Now I am informed, that in the charter of this Duke and of some other great persons, (which was also craved in passing Dom. Pedro Frazer, charter of Dores, on his father's disposition and resignation to him, but was refused by Dundonald; see the disposition and charter *apud me*;) there is a very different clause, viz. that in case any of them commit treason, they shall not forefault their lands, but shall descend and go to the next heir. This is *pessimi exempli*, and disadvantageous, and reflecting both on the honour, profit, and credit of the Crown.

See a large summary of Sir Alexander Frazer's disposition to his son, extracted by me in the beginning of November 1677.

*Advocates' MS. No. 614, folio 294.*

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1677. July 25. ANENT PRESCRIPTION OF MERCHANT ACCOUNTS.

*QUÆREBATUR*,—If the act ordaining merchant counts to prescribe within three years, *quoad modum probandi*, militates against strangers, who are not tied by our law, and know not such as are *juris mere positivi*. Yet it was alleged, that it did prescribe even to them, where the subject matter contraverted was Scots goods, for then *actor sequitur et forum rei* and the laws of his country.

*Advocates' MS. No. 618, folio 295.*

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1677. July 25. The COUNTESS of TRAQUAIRE *against* The EARL of SOUTHESK.

THE long debate between the Countess of Traquaire and the Earl of Southesk was decided this day. The Lords found the arbitrimt to the Archbishop of Glasgow, Earl of Queensberry, &c. not of an ordinary nature, in regard of these words, "They always having regard to the standing of the family;" and therefore sustained the decreet-arbitral. They found the irredeemable right was affected with a back-bond, and therefore appointed Southesk to count and reckon, &c.

*Advocates' MS. No. 619, folio 296.*