1771. *January* 23. James Paterson *against* William Taylor.

PROOF—HUSBAND AND WIFE.

Oath of the wife competent to prove furnishings made to herself or the family.

[*Faculty Collection*, *V.* 199; *Dictionary*, 12,485.]

Auchinleck. Mrs Taylor was *præposita* as to household affairs, and her oath will be good as to furnishings for her family; but her oath will not be received as to other matters in which she is not presumed to have any *præpositura*.

Coalston. This distinction was made during this winter in the case *Faulds* against *Pollock*.

On the 23d January 1771, "the Lords found those furnishings only which were made to Mrs Taylor, or her family, relevant to be proved by Mrs Taylor's oath, and remitted to the Lord Ordinary, reserving the consideration of expenses to the issue of the cause;" altering Lord Gardenston's interlocutor.

Act. A. Elphinston. *Alt.* J. Boswell.

1771. *January* 24. Earl of Eglinton *against* James Fulton.

REMOVING.

Warning held to be necessary, where the tack contained a clause to remove without it.

[*Fac. Coll.*, *V.* 205; *Dictionary*, 13,886.]

Gardenston. Some intimation was necessary, not in strict law, but from reasons of humanity. I think there was intimation enough. A tack is a *bona fide* contract. There is no pretence of *bona fides*: but the tenant is catching at every quibble, in order to retain possession. Tenants have found so many devices that it is almost impracticable for a master to get rid of them at the expiry of the lease. They take an additional year's possession at law. This ought not to be encouraged.

Auchinleck. On the 12th April 1770, the tenant was charged to remove at Martinmas 1769 and Beltane 1770; and so the Ordinary found, which was an oversight. He ought to have sustained the charge as sufficient warning to remove at Martinmas 1770, and Beltane 1771.

On the 24th January 1771, "the Lords found that the notification given in April 1770, was sufficient to make the defender remove at Martinmas 1770, and *Beltane* 1771; and, in respect that Martinmas 1770 is past, ordained her instantly to remove from the arable land, and at *Beltane* from the houses and grass;" altering Lord Pitfour's interlocutor.

Act. A. Lockhart. *Alt.* G. Ferguson.

1771. *January* 24. JOHN LAWRIE *against* MARY WADDLE.

TITLE TO PURSUE.

Objection to the Title of a Pursuer of a ranking and sale, removed by the concurrence of the party having interest.

[*Fac. Col. V.* 202; *Dictionary*, 16,130.]

HAILES. Had there been a discharge of the obligation to retrocess, it is admitted that there would have remained no objection. What is the difference between discharging this obligation and authorising the trustee to proceed, as if there had never been any such obligation?

COALSTON. I am surprised to see a petition of this kind given in. The whole intention of the litigation is to occasion delay.

On the 24th January 1771, "the Lords sustained the title to pursue, and found the petitioner liable in the expenses of the answers to the pursuer;" adhering to Lord Kaimes's interlocutor.

Act. D. Dalrymple. *Alt.* A. Wight.

1771. *January* 25. ALEXANDER GILLIES *against* ADAM MURRAY.

PROOF—EXECUTION.

Parole Evidence incompetent to rectify a mistake in the record of Judicial proceedings. Executions of Inhibitions must bear three oyezes and public reading.

[*Fac. Coll. V.* 207. *Dict.* 3,795.]

PITFOUR. Mistakes are incident to mankind. *Here* there is nothing more than a mistake in writing *five* instead of *three* in the execution. As to the three