1671. *November* 21. HERIOT of Ramorney *against* ———.

IT being controverted betwixt Heriot of Ramorney and , where a man who sells land, is obliged to give to the buyer a transumpt of the evidents before the Judge Ordinary, whether they might be transumed before the sheriff of the shire wherein the lands lie, or rather before the Lords;

It was ALLEGED,—The sheriff being a pedaneous judge, the Officers of State (who must of necessity be called, where transuming is intended of his Majesty's charters and other writs under the great seal,) are not obliged to compear before him.

It was ANSWERED,—The calling of them was only *dicis causa,* and signified nothing. *2do,* If there were necessity for calling them, then it might be done even before the sheriff by letters of supplement.

It was REPLIED,—Since I had paid the full price and worth of the land, it is very just I should be pleased with the security; and, therefore, *ne quid scrupuli insit,* it should be done before the Lords; where, if any difficulty occur, the advice of men of law is at hand.

It was DUPLIED,—That *electio est debitoris,* and, therefore, he has the choice of the judge before whom the same should be done. Next, if they will have it before the Lords, then that the charger may bear what farther expense they will be at in transuming them before the Lords than they would be if they did it before the sheriff. They added, it was most ordinary to transume before inferior judges.

This being taken to the Inner House, the Lords found thir evidents behoved to be transumed before themselves: not because the Officers of State must be called, (for they would not dip on that at this time,) but because the buyer behoved to be satisfied with the security, and this made it more firm and uncontroverted: only they recommended to the clerks not to exact the full rigour of the regulation, (*viz.* L.3 for the sheet,) but to be gentle.

Sir G. Lockhart said the Lords were like to the miller of Carstairs, drew all to themselves. And truly this decision has no shadow of reason but the clerks' advantage.

Advocates' MS. No. 267, *folio* 114.

1671. *November* 23. SINCLAIR of Ratter *against* ———.

IT was debated in the case of Sinclair of Ratter against ———, if a man might pass by his father, who was infeft, and serve himself heir to his goodsire, who was also infeft, to the effect he might elude his father's creditors: or if the said passing over his father, and entering by his goodsire, be not a sufficient passive title to bind his father's debt on him, *tanquam gerens se pro hærede.*

It was ALLEGED,—It was not; and his possessing in right of his goodsire was at most but vicious intromission, and tied him only to restitution of what he had meddled with, or in *quantum lucratus est.*

The Lords, *in præsentia*, found a man could not pass by his father who stood last vested and seased, and enter to his goodsire; and that the doing thereof inferred behaviour, unless he could condescend on some pregnant presumptions that he was ignorant of his father's being infeft: which is *ignorantia facti*, and so *nonnunquam excusat;* though it may be called *ignorantia juris, unusquisque enim tenetur scire quæ sunt in publica custodia,* and should seek the registers.

Advocates' MS. No. 268, *folio* 115.

1671. *November* 23. ROLLAND of DISBLAIR, and OTHERS *against* CRAIGIEVAR.

IN the debate about the regality of Lundors, pursued by Disblair Rolland, Sir Patrick Young of Seaton, and others, against Craigievar; it was ALLEGED, that though they were indeed vassals of the Abbacy of Lundors, and so liable to that regality before the act of annexation in 1587; yet by that act, (and the act 13, *in anno* 1633,) they became vassals to his Majesty, and so became subject to the courts within the royalty; and accordingly, by the space of forty years and more, they had prescribed immunity from the regality court, and had given suit and presence with the sheriff.

To this it was ANSWERED,—That *jurisdictio nequit præscribi.* *2do,* That some of the vassals of that regality, benorth the Cairnamont, have acknowledged the jurisdiction, and answered to the Court, and been amerciated for their absence; which use of some must interrupt the prescription *quoad* the whole. *3tio,* In counting the forty years, the ten years of the English usurpation must not be reckoned, because, during that time, all regalities were suppressed. *4to,* They offered to prove positive acts of interruption within the years of prescription.

The debate being reported, the Lords found immunity from jurisdiction might be prescribed, but they behoved to make up forty years beside those under the usurpers. They sustained likewise the reply of interruption for eliding their exception upon prescription, but found the exercising the jurisdiction *quoad* some did not interrupt *quoad* the rest.

There were sundry acts of homologation condescended upon, whereby they alleged thir persons had *tacite* acknowledged the regality; as their adjusting their proportions of stents and public burdens with the rest of the vassals of the regality, &c. But thir were referred to the mutual declarators, one of the right of regality, the other against it, as to their proper place.

Advocates' MS. No. 269, *folio* 115.

1671. *November* 10 and 24. SIR ROBERT BARCLAY of Peirstone, *against* LIDDELL and OTHERS.

November 10. PEIRSTONE having had dealing with one Robert King, tailor; after count and reckoning, King is found his debtor in L.1100; they agree that