was carried by the President's casting vote. It has so many circumstances attending it, that there is little hazard of a case exactly similar occurring once in a century.

1771. *February* 28. ALEXANDER IRVINE of Drum *against* EARL of ABERDEEN.

GROUNDS AND WARRANTS.

Letters of general and special charge, being warrants, not necessary to be produced after twenty years.

[*Faculty Collection, V.* 247; *Dictionary,* 5187.]

PITFOUR. It was determined, in 1725, that general charges were *warrants*, not *grounds*. Warrants are not to be forced after the lapse of twenty years.

AUCHINLECK. In the case of *William Sellers*, 1757, it was found, contrary to my interlocutor, that general charges need not be produced after twenty years; and this has been held in practice ever since.

MONBODDO. The words of the decree are express: besides, the pursuer is bound to produce the charges, if in his possession. The lapse of twenty years affords an excuse for not producing papers, if mislaid or lost. I do not think that the defender has the privilege of keeping up papers whereof he is possessed. *Charges* in one decision are considered to be *warrants*, I think erroneously. Warrants are the steps of process; but grounds are the writs and evidents, the foundation of the decreet. Of this nature are charges general and special. In the case of *Sellers*, there were many specialties. It carried by President Craigie's casting vote against the opinion of Lord Elchies.

PITFOUR. The case of *Sellers* was not determined upon specialties. The same judgment had been previously given in the *Creditors of Carthrene.*

PRESIDENT. In argument, stress may be laid upon specialties; nevertheless, the judgment in the case of *Sellers* was in point: it would be dangerous to alter it. I will not do that injustice to the House of Lords, as to suppose that it meant to order every deed to be produced, without considering what was the nature of the deeds, or what was the law of Scotland.

GARDENSTON. I doubted of my power as an Ordinary to limit the words of the decree of the House of Lords: besides, I do not see a reason for the decision in the case of *Sellers.*

COALSTON. In consequence of the decision of the Court of Session, I have held that *charges* are *warrants*, and that, after 20 years, *warrants* need not be produced. In strictness of speech, nothing is a *warrant* but the judgment of the Court. The meaning of the decree was to repel the preliminary defence, and to find that the defenders must take a day to produce. The words of the decree are inaccurate; and hence, the pursuer endeavours *captare verba*, contrary to the purpose of the House of Lords.

KAIMES. If charges are to be called *grounds*, every thing may be called grounds; and, in particular, the final interlocutor of the Court on which the extract is *grounded*. We are not bound to take the *words* of a decree of the House of Lords against its *meaning*, more than we are bound in the case of an Act of Parliament.

JUSTICE-CLERK. Challenges that go to the *justice* of a debt are preserved for 40 years; but the Court never acted more salutarily and wisely than in finding that an adjudger is not bound, after 20 years, to produce *warrants*. Every thing, not *grounds*, is *warrants*. The Court has made no distinction whether the warrants are in a man's possession or not; and, indeed, there is not a distinction: for why should a man be favoured for having lost the warrants, more than he who has chanced to keep them. If you pass 20 years, you must go back for 40 years; perhaps much farther if there are minorities. If you take the words of the decree literally, all executions, &c., must be produced. I will not put such a construction on the decree.

On the 28th February 1771, the Lords "found, in respect that general and special charges are not *grounds*, but *warrants*, and that *grounds* are not required to be produced after the lapse of 20 years; that, therefore, the defenders are not obliged to produce charges or other warrants of adjudication;" altering Lord Gardenston's interlocutor.

Act. J. Fergusson. *Alt.* A. Lockhart.

Diss. Monboddo.

July 19.—MONBODDO—Held as formerly that special charges were *grounds*, not *warrants*: that there is only one decision to the contrary, that of *Sellers*; and that it proceeded on specialties.

HAILES. It is impossible to say that there is but one decision: there are many on this point. The judges who sat in Court when the case of *Sellers* was determined, said that it was not determined on specialties. I will not so interpret the judgment of the House of Peers, as to suppose that, even without hearing the cause, it meant to subvert the usages of Scotland.

PRESIDENT. If special charges are *grounds*, it would be no defence that they were lost; for, if *grounds*, they must be preserved, and, when lost, they are lost at the risk of the person whose title is founded on them.

COALSTON. A special charge is no ground: it is no part of the pursuer's progress.

GARDENSTON. I now think that a special charge is part of the process, and therefore a warrant.

On the 19th July 1771, the Lords, "in respect of the reason mentioned in the former interlocutor, and that general and special charges are no part of a pursuer's title, but produced as evidence of a passive title against the defender; and also in respect of the former decisions of this Court, and of the acquiescence of the nation therein; they adhered to the former interlocutor concerning general and special charges."

Act. D. Rae, &c. *Alt.* H. Dundas, &c.