1671. *February* 25. Anent ADVOCATES.

IT was debated in a cause, whether an Advocate could be forced to depone upon a conveyance made by him in behalf of his client. And it was alleged, an Advocate was not obliged to reveal his client's secrets, no more than a Priest should reveal confessions,) except it be *in materia falsi* or *læsæ majestatis*. Yet advocates have been often examined upon their client's businesses. *Vide* Dury 14*th November*, 1628, *Betsone* against *L. of Grange*, and *Sir Robert Sinclair* and others were forced to depone in *Lewie Barclay's* action. See Mr. Styles' English practical register voce *witness, page* 569. *Vide* H. de Marsiliis, *singulari* 424. *Vide infra, February* 1674, *Dumfermling and Calendar, No.* 445, *in fine*.

Advocates' MS. No. 157, *folio* 93.

1671. *March* 5. CLAUSE.

The following clause was advised by Sir T. Wallace, in an heritable right, *viz.* a contract of wadset granted by a debtor to his creditor in his lands, with a precept of seasine, and upon which seasine did actually follow; that notwithstanding of the law, upon the death of the receiver of the wadset this right would appertain to his heir and not to the executor, yet *hoc non obstante*, it was the express intention and desire of all parties that this right might descend to the executor, notwithstanding of the common law to the contrary; to the which, the parties by this special paction will a derogation: and if it shall chance the heir to quarrel this, and to lay claim to the succession of this right, then and in that case the parties will and appoint this present real right to become null, to annihilate and expire as if it had never been, and the right to return to the bounds of a naked personal obligement, so that the sum in the wadset may ever belong to the executor; and ordain this clause to be inserted in the seasine, and all the other rights to follow thereupon. Though this was called the opinion of an eminent lawyer, yet some differed much from him, and think it a clause not sustainable in law; *nam pactis privatorum non potest derogari juri publico, l.* 38 *D. de Pactis;* especially such fundamental laws, as the heir's succession in real rights: hence a man cannot leave his wife tutrix to his bairns, in the case that she superinduces a second husband, (*infra February*, 1677, *No.* 555, § 2, see *February* 1680,) because it is a dispensing with a general law that deprives her of the tutory of her own bairns, so soon as it appears *eam convolasse ad secundas nuptias: vide* 8*th March* 1636, *Stewart* against *Anderson*, and the civil law there cited. And I would gladly know if it would be a valid paction betwixt a debtor and his creditor that, notwithstanding of the common law appointing no more profit to be taken but six for each hundred, yet that the debtor *ex certa scientia* dispenses with the said law, and is most willing cheerfully to pay eight or ten per cent; sure this would not be sustained but the creditor would be punished as an usurer; so that it is hard to determine how far persons may renounce laws introduced in their favours, (though *de jure cuilibet licet renuntiare favori pro se introducto, l.* 29 *C. de pactis;*) and it is thought debtors gave only valid discharges of the act of debtor and creditor 1661, because by the very act power was given to any who pleased to renounce it. And I ever doubted much of this reservation, I have seen cast in heritable bonds and real rights, that notwithstanding *de jure* a man on death-bed cannot dispone upon heritage, yet that