

No. 4. 1744, Nov. 6. MR WILLIAM STEEL *against* WEIR.

WEIR raised brieves for serving heir before the Magistrates. Steel presented a bill of advocacy, which Balmerino passed. Weir presented a bill consenting to advocate from the Magistrates, and praying remit to the macers, and to name assessors,—which the Lords granted Saturday last. Steel this day reclaimed, and said it was against form, which we all agreed to refuse; but we granted him a diligence to recover his writs to be reported before the macers.

No. 5. 1749, June 9. MRS SETON of Touch *against* SIR HENRY SETON.

SETON of Touch's estate being by the investitures to heirs-male, Archibald Seton, in his contract of marriage 1721, devised it to the heirs whatsoever of that marriage, and died leaving a son and daughter. His son's tutors served him heir of the ancient investitures, on which he was infest and died. His sister could not serve heir of the investitures; and her lawyers doubted whether the father's procuratory of resignation could lawfully be executed after the fee was vested in the son by the service, and therefore raised reduction of the son's service and infestment on minority and lesion against Sir Henry Seton the heir-male, which Dun reported to us for advice, though he declared he had no difficulty to reduce. I thought, though the procuratory could not be executed, and that the pursuer should be forced to adjudge in implement from the heir-male, that was no sufficient qualification of lesion to the minor, to induce us to reduce his infestment, and make him die in the state of apparency. The President was of my opinion, but said further, that it was no question at all that the procuratory might be yet executed, as was done every day, and particularly by himself, and that judging otherwise would make a great confusion in numbers of land-rights in Scotland. There was but a short memorial given in to us, and we agreed not to receive it in that shape for advice, nor at all, if the pursuer should insist for it without full informations; and the President advised Mr Ferguson for the pursuer not to insist for it.

No. 6, 1752, June 12. ANN, &c. LANDALES *against* LANDALES.

ANDREW LANDALES held his land ward of Gibson of Durie, and in 1667 was infest in them to him and his heirs of his then marriage, whom failing, to his heirs and assignees. In 1686 he disposed them to his eldest son David, and in 1719 David bargained with his superior to change the ward into feu, and at the same time he gave Durie the benefit of some water in his ground to serve Durie's coal; but instead of getting either a charter of resignation or a precept of *clare constat*, he got a charter reciting the agreement to change the holding, that David was eldest son to Andrew, and that he had got the disposition 1686, and therefore grants the lands to be held feu, to David in liferent, and to Andrew his son in fee, but reserving power to David to sell, annailzie, or contract debt, &c.—and of the same date he grants the obligation to Durie concerning the water, written by the writer of the charter, at least by the inserter of the date, witnesses names and designations, (it being written by his servant,) and signed before the same witnesses;