

1676. *February 24.* ANENT SEASINES WITHIN BURGH.

THE Lords found it no ground of nullity or reduction whereupon to quarrel or impugn a seasine of lands within Aberdeen, being a burgh royal, that it was not found recorded in the town's books; for the Lords found no necessity of such recording, since it is not enjoined by the 16th act in 1617, that excepts burgh seasines from registration; for since none can give such seasines but the town-clerk, they will be found in their protocol-books, as to which they are at least obliged to be exact.

*Advocates' MS. No. 466, folio 240.*

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ANENT REPETITION AND INDEBITI SOLUTIO.

WHERE a person obtains a sentence in his favour, if it appear another hath a pretence to that thing which is decerned to be given up, the law rationally secures the defender, by ordaining the victor to find sufficient caution to refund the thing, with its profits, in case the other competitor prevail, and be found to have best right, at least better right than the other. So appoints *L. 57 in duobus unam hæreditatem petentibus*; *L. 57, D. de rei vindicatione in duobus unum fundum vindicantibus*; *L. 5, p. 19, D. de Tributoria*; where an equal distribution is made of the goods, yet with caution to refund if other creditors emerge. And that which comes nearest of all to our practice, is *lex. ult, C. de Jure Deliberandi*; where, if legacies be paid and creditors afterwards appear, what was paid to the legatees may be conducted and repeated from them as *indebiti solutum*: only it is somewhat dubious, if the executors shall be liable, referring them to their relief of the legatars, or if the creditors must betake themselves to the legatars; and if they have been long silent, I think they should. See Dury, *25th July, 1634, Crawford and Mathisone*; *6th March, 1627, Scot and Cockburne*; *13th March, 1627, Ker contra Lady Covinton*. *Vide supra, 2d December, 1675, (Kello against Kello,) numero 453, in fine.*

*Advocates' MS. No. 467, folio 241.*

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1676. *February.* MORISONES and SMALL *contra* ROBERT PATERSON, Writer in Edinburgh;

WHOSE author having apprised the lands of Dykes, and served an inhibition, did intent a reduction of some feus granted by Forsyth of Dykes to Morisones' and Small's predecessors: in which having obtained a certification for not production, they raised a summons of reduction of that certification: in which being reponed, and after production, it evidently appearing that the feu-rights were long prior to the inhibition, and thereupon craving to be assoilyed;

It was ALLEGED for Paterson, That he was content the absolvitor should take