

was to the disponder's own behoof. However he gave them the Lords' answer on it.

*Act. Sinclair.*

*Alt. Wallace.*  
*Advocates' MS. No. 12, folio 72.*

1670. *June 14.* HALIBURTON *against* F. SCOT, Keeper of the Minute Book.

THIS was a reduction of a right upon the act of Parliament 1621, as done *inter conjunctas personas*, without any true or onerous cause. My Lord Newbyth, (because of the act of sederunt appointing all reasons of reduction to be heard in the Inner House, unless there were a warrant to the Ordinary in the Outer House to hear them,) refused altogether to hear them on their reason, seeing there was no warrant lying in process; and this, although the defender was content to dispense with the want thereof, and was earnest to be heard *in causa*.

*Advocates' MS. No. 13, folio 73.*

1670. *June 14.* The TOWN of ANNAND *against* GRAHAME.

THIS was a pursuit for some customs granted by the Parliament in 1661, to this burgh, of all beasts driven through their privileges, either from Scotland or Ireland, to England.

ALLEGED,—Thir customs was not contained in their charters of erection, but was only given by an unprinted act of Parliament, which are ever impretate *periculo petentis*. My Lord Newbyth inclined to sustain such a custom, if the said town would prove they had been in possession thereof: though it was alleged that no possession, though of never so long a time, can validate an unlawful custom tending to oppression, as this does; and adduced the practise of *the Burgh of Lithgow and the Fleshers of Edinburgh*, out of Dury, 15th November, 1621. He was ordained, before answer, to produce his practiques he founded on.

Chalmers and Hog.

*Advocates' MS. No. 14, folio 73.*

1670. *June 15.*

*Referente Domino Gosfuird*, the Lords found a declarator of bastardy need- ed not to be continued, *ob favorem fisci*; but the pursuer behoved to take a day to prove his summons, viz. that such a person, the gift of whose bastardy he craves may be declared, was gotten on a woman who was never married to the said person's father, and this by witnesses: Notwithstanding, it was alleged, that bastardy was a negative, and so could not be proven, but proved the self; *2do*, That it was impossible to prove it now by witnesses, since the bastard was sixty