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

Act. Sinclar. *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 practique of *the Burgh of Lithgow and the Fleshers of Edinburgh*, out of Dury, 15*th 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 needed 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; 2*do*, That it was impossible to prove it now by witnesses, since the bastard was sixty

years old ere he died, and so no witnesses can be adduced for proving that point but such as must be past eighty.

Advocates' MS. between No. 15 *and* 16, *folio* 73.

1670. *June* 15. WOOD *against* REOCH.

THIS was a spuilyie for eliding whereof there being an exception (offers to prove lawfully poinded) proponed, the pursuer craved he might condescend, by virtue of what he had poinded; of a sentence or a bond. The defender answered, of a sentence recovered on a bond granted by this pursuer to the defender.

REPLIED,—The defender can never be heard to maintain his poinding, and defend himself from a spuilyie by that sentence and bond; because the pursuer offers him to prove that he has obtained reduction in *foro* of that bond, and all that has followed thereon *ex capite minoritatis et læsionis.*

DUPLIED,—The reply *nullo modo relevat* to make the defender a spulyier, unless he say he had obtained the said decreet of reduction before the poinding.

TRIPLIED,—That if his decreet be found posterior to the poinding, then he is content to restrict his summons to vitious intromission and restitution of the goods intromitted with by virtue of the said poinding. The Lords restrict the summons *ut supra.*

Vide Hope, tit. Spulyie, folio 172, *in calce.*

Act. Hog. *Alt.* Chalmers.

Advocates' MS. No. 16, *folio* 73.

1670. *June* 16. RIDDOCHS *against* SORLEY.

THIS was an action for making up the tenor of a disposition: ALLEGED this action cannot be sustained, because the said disposition being dated *in anno* 1626, there was nothing followed thereon while the intenting of this cause, which was not till 1667, and so the said writ was prescribed.

ANSWERED,—There was a summons of removing raised and executed within the forty years of prescription, which interrupted the same.

REPLIED,—That it is a rule of law *non prestat impedimentum quod de jure non sortitur effectum,* but so it is, that summons was elided by an unanswerable defence of twenty years' possession before the same, by virtue of a right standing unreduced, and therefore could produce no effect, not even as to the interruption of prescription.

The Lords found the said summons (though the same was taken away *ut supra)* was sufficient interruption.

And the *casus omissionis* being libelled to have been the time of the plague in 1645, the said condescendence was sustained, since *tempus pestis est tempus calamitosum et privilegiatum.*

Act. Bailzie. *Alt.* NORVELL. *Advocates' MS. No.* 17, *folio* 73.