

1670. *June 25.* LORD LOVAT *against* LORD M'DONALD.

THIS was an improbation in which it was found, *Imo*, That a service without a retour instructs the party served to be heir *passivè*, but not *activè*, and so will not furnish an active title whereon to pursue. *Vide Durie, 18th February, 1627, Simpson.* *2do*, A general service may be led before any judge in the kingdom at the party's option, though neither the defunct nor the heir lived within his jurisdiction.

*Advocates' MS. No. 35, folio 76.*

---

1670. *June 25.* REID and RANKEIN *against* BURRELL.

BY a contract of marriage there is an annualrent provided to the husband and the wife, and the longest liver of them two in conjunct fee, and to the bairns of the marriage; which failyieing, to the wife's heirs. The wife's heirs are FOUND to have right thereto; notwithstanding, it was ALLEGED, That by existency of bairns of the marriage, the wife's heirs were wholly excluded, and the right of the annualrent returned back to the heirs of the husband; for they found though these bairns had been served heirs to their father, yet whenever they failyied, the wife's heirs, by virtue of the substitution of the contract, will come in as heirs of tailyie or provision to them; and notwithstanding that the father, or the heirs of the marriage, as fiars, might have alienated the said annualrent, seeing they never made use of their power.

*Advocates' MS. No. 36, folio 76.*

---

1670. *June 25.* Anent AN ALLEGEANCE OF MINORITY.

WHERE there is an allegiance made up on minority, and for taking it away, majority is offered to be proven, the Lords are in use, before answer, to admit of a joint probation.

*Advocates' MS. No. 37, folio 77.*

---

1670. *June 25.* STEWART *against* STEWART.

ONE being charged upon a bond, he suspends, that the same is null, being only subscribed by the two initial letters of his name. It was REPLIED,—He offers him to prove he was in use so to subscribe at other times.