

1670. *July 13.* The COUNTESS of DUNDIE *against* The TOWN of DUNDIE.

THE Countess, as donatrix to her husband's liferent escheat, (who was superior to sundry lands holden by the town of Dundie of him,) pursues the town and magistrates thereof, to pay to her the feu-duties of these lands, with the mails and duties of the mill of Baldovin, wherein her husband was infeft.

ALLEGED,—They offered to prove they were infeft, and seven years in possession of that mill, by virtue of their right before the intending of this cause.

ANSWERED,—They could not be heard, unless they condescend by whom they are infeft, for if any such infeftment be, it is offered to be proven the same is only subaltern, and proceeding from my Lord Dundie's own predecessors.

REPLIED,—They needed not condescend; because it being notour that the whole evidents of that town were burnt, and the town having made their application to the Parliament, they ordained in all pursuits, either for or against Dundie, it should be lawful to them to make up their writs so lost by sic adminicles as they could find, without putting them to the necessity of proving their tenors.

They are ordained before answer to produce their act of Parliament, and *hinc inde* to produce all such writs as may tend to clear the cause.

Act. Lermonth and Lockhart.

Alt. Dinmuire and M'Keinzie.

Advocates' MS. No. 74, folio 82.

1670. *July 14.* WISHART *against* Children of Mr. WM. ARTHUR and LEYES.

IN this cause it was debated, (it being a declarator of the extinction of an apprising by intromission, at the instance of one who had a disposition of the lands appraised,) *1mo*, that a naked disposition, whereupon no infeftment had followed, could never give the pursuer an interest to annul the apprising in the manner libelled, unless he had been *per expressum* assigned to the legal reversion, and that assignation had been registrate conform to the act of Parliament *in anno* 1617. *2do*, That a naked disposition without infeftment, could give a party no right to call for the mails and duties of lands. *3tio*, That a disposition, until seaisine follow thereon, which is made public by its registration, is no way a public right against a compriser, or any other third party.

Act. Home.

Alt. Maxwell.

Advocates' MS. No. 75, folio 82.

1670. *July 15.* The EARL of WINTON *against* JAMES INGLIS.

THIS James having been the Earl's chamberlain, and about a year ago having ended counts with my Lord, he was found my Lord's debtor in L.10,000, for which he grants bond to the Earl; this bond is lost someway by sloth. The Earl by his commissioners, whom in his absence of the country he left to oversee his

estate, intents an action for proving the tenor of the bond ; and refers all to the defender's oath ; both the bond, its contents, and that the same is not as yet paid.

This was FOUND RELEVANT, and a day was assigned to produce him to depone, and it was granted he should depone in presence of the witnesses in the bond.

Act. Seaton.

Alt. Inglis.

Advocates' MS. No. 76, folio 82.

1670. *July 15.*

THERE was an action at Sir Robert Sinclair's instance, of declarator of his gift of *ultimus hæres* of the Laird of Halero in Orkney, against the heirs female thereof.

Advocates' MS. No. 77, folio 82.

1670. *July 16.* The VISCOUNT of STORMOND *against* The EARL of NORTHESK.

THE Earl of Northesk, then Earl of Ethil, having employed the Viscount of Stormond, by his missive letter, to procure to him the change of his title of honour ; declaring that what he should expend in doing thereof, he should thankfully repay the same. The Viscount, having procured the same by the mediation of Mr. Andrew Hay, and having given above L.100 Sterling therefore, pursues the Earl upon his missive, for reimbursing him that and his other expences. Their defence was upon compensation.

Act. Mr. William Murray.

Alt. _____

Advocates' MS. No. 78, folio 82.

1670. *July 16.* The EARL of WEIMES *against* The MARQUIS of DOUGLAS.

THIS was a pursuit for relief of cautionary paid by the Earl for the Marquis his father.

ALLEGED, *1mo*, A great part of the sums paid were bygone annualrents, of which he can never be heard to crave annualrent. REPLIED, Ought to be repelled, in regard a cautioner ought to be freed of all damage and interest incurred by him thereby. The Lords FOUND he should have annualrent of the annualrent paid.

ALLEGED, *2do*, He can never be heard to seek relief unless he say he paid it on a distress. REPLIED, The bond was registrate by the president against him. The Lords FOUND that sufficient distress.

Act. Cheap.

Alt. Lockhart and Colt.

Advocates' MS. No. 79, folio 82.