

1671. *January 13.* TOD and JOHNSTON *against* my LORD DRUMLANRICK.

MY Lord having ejected thir persons by virtue of a decret of removing, they intent reduction of that decret upon this reason, that my Lord had no right to these lands standing in his person, but the naked superiority. Answered,—He had got an resignation *ad perpetuam remanentiam* from the last vassal of these lands, and so the property and superiority were confounded, and both concentrated in his person.

REPLIED,—This resignation cannot be respected, because, before it, the pursuers having charged Drumlanrick superior to enter them to the lands, as having right thereto by disposition, precepts were direct out of the chancellery, upon his disobedience, to the Sheriff for infesting them, and they were accordingly infest before the resignation.

DUPLIED,—The precepts and the seasine are null, in respect the charge given to my Lord was suspended before the seasine was given.

TRIPLIED,—Ought to be repelled, because the suspension was antedated, and though it bears date four days before by seasine, yet Walter Riddell and Hew Wallace the writer of it, being examined thereupon, they have both acknowledged that the bill was not so much as presented while after the date of the seasine.

Their dispositions were ordained to be advised.

*Advocates' MS. No. 105, folio 85.*

1670, and 1671. MAGNUS MOWAT *against* The TOWN of LITHGOW.

1670. *July 22.*—This was a spulyie which they restricted to vitious intromission; against which, alleged *absolvitor*, because any intromission the town had with the goods libelled, was by authority of an act of Parliament, *Ja. 6, Parl. 12, Cap. 152*: authorizing and empowering all burghs Royal, to search, apprehend, take, and intromit with the goods and geir of unfreemen traffickers within the bounds of their respective jurisdictions, and to apply the one half to their own use, and the other to the king's; for this pursuer being an unfreeman, yet keeping a common trade of staple commodities betwixt Holland and Borrowstouness, (which lies within Lithgow's territories,) they apprehended some soap pertaining to him; and so what they did, being done *optimo jure* they can never be liable therefore.

ANSWERED,—*Imo*, Where he is called an unfreeman, offers to prove he was a freeman in Kirkcaldie, Dundee, and sundry other free burghs, and so had power to trade in staple commodities. *2do*, Where the town of Borrowstouness is said to be within the defenders' territories, the contrary is notour, it being a free regality erected to Duke Hamilton. *3tio*, The defence is not conceived in the terms of the act of Parliament whereon it is founded; for it requires that the goods