

it shall be leasum and lawful to him at any time in his lifetime, *etiam in ipso articulo mortis* to uplift it, dispose of it, leave it by his heir to him he pleases, &c. : or thus, where a man and his wife are infest upon a comprising in liferent or conjunct fee, and his three daughters in fee (this is *Magnus Ayton's* case), but with this provision that it shall be lawful to him, albeit the fee be provided to his daughters, to uplift the sum at any time in his lifetime though on death-bed, and dispose and use it at his pleasure, the question falls whether or no by virtue of this act *inter vivos* a man can validly dispose upon his heritage *in lecto ægritudinis* to the prejudice of his heir, so that it will defend against a reduction intended by the heir *ex capite lecti*.—See more of this in *February 1670, Mossman* against *Bells*, No. 7. *Advocates' MS. No. 160, folia 94.*

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1671. *March* Anent the JURISDICTION of the COLLEGE of JUSTICE.

It is uncontroverted but the members of the College of Justice *in civilibus*, have *præscriptionem et privilegium fori*; none others, by acts of Parliament, being judges competent of their civil actions but the Lords of Session only. But whether it be so *in criminalibus*, as riots, or the like, may be much doubted. Paulus Voet in his tract *De Statutis*, page 282, states this question, and thinks an exemption to advocates, from answering to inferior courts of this kind, should not extend to criminal actions. Upon the one hand, it seems that the magistrates of Edinburgh, (though justices of peace within themselves,) nor no inferior judges to the Lords of Session, Secret Council, or Justice, can meddle with them, because by act 29th, Parl. 1661, ratifying the whole College of Justice's privileges, it is declared, that all liberties and immunities belonging to the Lords of Session are extended to belong, and appertain by the advocates and all other members of the College of Justice; but *ita est* by express act of the same Parliament, *viz.* act 38, containing instructions to the justices, the said justices of peace have no power to meddle with the Lords of Session; *ergo* neither with the other members of Session. (*Vide infra, February 1678, No. 721.*) Yet by that same 38th act, it would seem in the matter of riots and such like, the members of Session may be punished and proceeded against by the justices of peace, and consequently by the magistrates of Edinburgh, because they are empowered to proceed against all offenders whatsoever, under the degrees of noblemen, prelates, counsellors, and senators of the College of Justice; unless we say the whole members of Session must be understood there under the Senators of the College of Justice, as enjoying all the same privileges with them. Our privileges got a sore dash in 1670 by the eighth act of that Parliament, where the Lords of Session their privileges are ratified, and nothing of the rest—See my animadversions on that act.

*Advocates' MS. No. 161, folio 94.*

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1671. *March 9.* Anent the KING'S HYPOTHEC.

SEVERAL creditors contending for the escheat of James Hamilton the Collector, before the Exchequer, Mr. Stamfield was preferred to it, but with the burden of 5 or 6000 pounds Scots, due by the rebel to the king for custom and excise,