

1676. *November.* ANENT CONFIRMATION OF BASE RIGHTS.

QUÆRITUR, If the confirmation of a base right stops ward? That it stops forfeiture and recognition, none doubt. Distinguish, *1mo*, whether before the act of Parliament, 1606, or after. *2do*, If the confirmation be by a subject superior, or by the King. If by a private superior, or before 1606, then it does stop ward; otherwise not. *Vide infra*, 6th July, 1677, No. 590, [Grant against M'Keinzie.]
Advocates' MS. No. 508, § 6, folio 26.

1676. *November.* ANENT SEASINES ON PRECEPTS FORTH OF THE CHANCELLARY.

IN precepts forth of the Chancellary, for infesting whether upon retours, or on the mediate superior's disobedience, there is a clause, *presentibus post proximum terminum minime valituris*. Notwithstanding whereof, a notary gives seaisne after the year is past. I think the seaisne will be null, *ope exceptionis*, because it is given without a warrant. Hope, in his lesser tract and Compend. cap. 70, Of Signatures, No. 12, seems to insinuate the reason why they are so abridged, because the sheriff must be answerable for the respond contained in these precepts. Besides there is *commodum curiæ*, in the renewing. See him also, cap. 3, Of Wards, &c. No. 16.
Advocates' MS. No. 508, § 7, folio 266.

1676. *November.* ANENT WAKENING OF PROCESSES.

WHERE a defender in a process depending dies, you cannot raise a wakening of that same process against his heir, (for wakenings are only *inter easdem personas*, where it has slept more than a year,) though it may be said that *hæres et defunctus* are *una et eadem persona, fictione juris*; but a summons of transferring must be raised of that process, or else a new pursuit against the heir; see Craigie's Collection, *verbo* Wakenings, folio 129; where he cites Dury, 18th December, 1629. A wakening of an improbation must be likewise raised, and executed at the King's Advocate's instance as a party pursuer, else it will be null. But *quæritur*, where a declarator is raised by a defender to meet an improbation pursued against him, (being of the nature of a reconvention,) if it must be likewise executed against the advocate.

Advocates' MS. No. 508, § 8, folio 266.