3d January, 1679, Daes and Lindsay.) 4to, *Mater vel est locuples, vel pauper.* 5to, *Impensæ factæ vel sunt magnæ, vel tantum parvi momenti.* To which I add, 6to, *Liberi vel sunt infantes, vel infantiæ proximi,* with whom she could make no paction; *vel sunt puberes, seu pubertati proximi.* 7*mo,* The children either had means of their own *aliunde,* whereupon they might be sustained, or not.—See Guthrie and M'Karstan's case in 1672, No. 314, *supra.*

Advocates' MS. No. 471, § 3, *folio* 243.

Anent Comprising.

I have heard it affirmed, that a man may now comprise upon a bond without giving a preceding charge of horning; upon this reason, that an execution of poinding and denunciation is a more solemn intimation to the debtor, and bears also a search for moveables, than a single charge; but the bond must be registrate. However, I think it *humanior sententia* to give him time by a charge, conform to the noble method prescribed in *L.* 15. *D. de Re Judicata.* In the Roman law, they had *inducias quadrimenstruas ad solvendum judicatum.*

Advocates' MS. No. 471, § 4, *folio* 244.

Anent Lords of Session.

I have heard of an act of sederunt, at least a consuetude, where a Lord of the Session retires upon a demission; because of the character he once bore, he takes place of all that are admitted afterwards on the Session, though they be actually Senators, and he not. This holds where his *missio* is *honesta vel causaria,* but not if it be *ignominiosa.*—See *Tuldeni Jurisprudentia Extemporalis,* p. 249. See Papon's Arrests, p. 363.; *Codex Fabrianus,* lib. 1. tit. 2. defin. 13. p. 31.; Hope's Collection, tit. Of the Session, fol. 131.; where another place of Faber is cited, viz. lib. 3. tit. 17. *ubi Senatores vel clarissimi.* See *Hippolitus de Marsiliis singul.* 107. See my Observes on the act of Apparel, 1672. *Vide Ægidii Menagii Juris Civilis Amœnitates,* cap. 28.

Advocates' MS. No. 471, § 5, *folio* 244.

Anent Disposition to a Son *in familia.*

Lands disponed to a son *in familia,* or minor, *præsumitur* to be bought and acquired with the father's means, especially if the son be minor; and so the father's creditors may effect the land bought, by a declarator; whereof see the form set down by M'Keinzie, in his Observations on the act of Parliament, 1621, against Bankrupts, p. 174. Hence Antonius Faber, in his famed Codex, p. 413, says, *Pecunia*

præsumitur semper ementis, nisi sit filius in familia; and so found the Lords in Posso's case, in February, 1668. See this in some cursory Observes out of Faber's Codex, *alibi.* But *dubitatur*, if the money wherewith the land is bought be the price of lands lying in another kingdom and sold, and brought from that place, *ex. gr.* from England, where, if it had continued, they could not have reached it.

Advocates' MS. No. 471, § 6, *folio* 244.

ANENT THE MARRIAGE OF APPARENT HEIRS, IN WARDHOLDINGS.

THE Lords found, in the case of my Lord Colvill, in February, 1667, that an apparent heir's precipitation of his marriage when his predecessor is upon death-bed, to frustrate the Exchequer, or other superior of ward-lands, of the benefit of their marriage, is unwarrantable; and therefore found them liable in the casualty, as if they had been married after; as may be seen at the forecited place, where they went upon Balfour's authority. (Skeen, in his learned notes on *Quoniam Attachiamenta*, cap. 91. in Latin, tells sundry decisions of the same.) Yet it may be argued, that an apparent heir should be permitted to marry *in articulo mortis* of his predecessor, as well as the law allows a man to marry his concubine *in articulo mortis, ad effectum legitimandi bastardos ex ea genitos*, whereof Craig gives an instance in the Lord Semple, p. 230; for both equally prejudges the fisk. Yet there seems to be some disparity; for the marriage of the apparent heir, (if it had not been precipitated,) were a certain and uncontroverted casualty befalling to the superior. That of bastardry is not so: because the bastard may dispone, in *liege poustie*, his means to whom he will; and if he have lawful children, they succeed to him without any right *ab intestato;* and so nothing would fall due to the King, or lord of regality, if it be within one; and they have right to bastardies and last heirs, which is doubted. 2*do*, Marriage is most favourable, and therefore allowed at any time; and yet its principal end, which is *procreatio prolis*, cannot then be obtained; *et cessante causa, cessare debet effectum;* and this reason is common to both cases, only in the last there is the favour of legitimation superadded. *Vide supra*, July, 1671, No. 235.

If an heir of ward lands be infeft in his father's lifetime, his marriage is not due to the superior; and if he has got one marriage, he will not get the second when he falls a widower. *Alias* in an heiress of ward-lands.—See Skeen and Stairs on the Casualty of Marriage.

Advocates' MS. No. 471, § 7, *folio* 244.

1676. *February.* SIR WALTER SETON of Abercorne *against* the EARL of WINTON.

SIR WALTER SETON of Abercorne having been the Earl of Winton's tacksman for three years, as to his casual rent of coal and salt in East Lothian, for which he was to pay him 24,000 merks of tack-duty; and when they came to count and reckon, he gave up exorbitant deburscments waired out upon the putting down of