

and no discharge or *æque* made in Exchequer for them ; nor no *novo-damus* shewn, (and yet I hear they regard not a *novo-damus*, and though it be passed and subscribed at Court by his Majesty, they exact the preceding feu-duties ;) they would not give out his signature till these were satisfied ; and they might crave 39 years back.

Advocates' MS. No. 635, § 1, folio 299.

1677. *August 3.*

EWART, Provost of Dumfreis, *against* M'GUFFOCK of Alticray.

M'GUFFOCK of Alticray, presenting a signature, upon an adjudication of some lands belonging formerly to the Lord Kircudbright ; compearance was made for Mr William Ewart, Provost of Dumfreis, who stood infest in some of them ; and it was ALLEGED, no infestment could pass as to these, but they behoved to be expunged, because this signature was to the behoof of Sir David Dumbar of Baldune, and he had renounced the adjudication in so far as concerned these lands. Whereon Baldon being examined, denied the same.

Advocates' MS. No. 635, § 2, folio 299.

SUPRA, at number 500, and 501, in October 1676, I have made a small collection of law observations, I had dispersed up and down in other paper-books, and pointed at the places where they lie, that it may serve for a ready direction ; like the names affixed to the apothecaries' pigs and boxes. In prosecution of that method, I shall here shew where my extraneous law remarks, not contained in thir sheets, and may be called *extravagantes communes*, since that time, are, it being the space of a year. They are contained in a manuscript book, which begins with

The qualifications requisite in electing Commissioners to the Parliament. *2do*, If bills of exchange bear annual rent after accepted. *3tio*, Anent the link between disturbances in Church and State. *4to*, From Bouritius *de officio judicis*. *5to*, Some satire lines. *6to*, Anent arresting boats. *7mo*, Anent charters of lands in the Canongate. *8vo*, Anent Sinclair's Practiques, and Nicolsons's, and Durie's, and Colvill's. *9no*, A summary compend of my other law observations. *10mo*, From Skeen in *Regiam Majestatem et Leges Burgorum*. *11mo*, Anent suffocation of monstrous births. *12mo*, Anent burnt tenements. *13tio*, Anent the action flowing from an infestment of annual rent. *14to*, Anent the encroachments of Secret-Council and Exchequer, on the Session and criminal Court. *15to*, Anent women being witnesses. *16to*, Anent macers' qualifications, and the hours of the Lords' sitting. *17mo*, Anent a clause in a feu of some lands in Douglas. *18vo*, Anent the town of Edinburgh ; anent festival days ; the Lords' varying decisions ; sundry ridiculous things in our acts of Parliament ; a compend of Aberdeen's

charter in 1638; anent arbitrations; anent the clerk of the bills his being liable for the cautioners he receives; anent the King's advocate's pursuing improbations alone; anent inverting pious donations; anent the true crisis of a process; and an infinite number of other observations that are to be seen in that book; to which I refer, it being sufficient to have hinted at a few of them.

Advocates' MS. No. 643, folio 301.

1677. *November 1.* ACTS OF SEDERUNT.

THE Lords fell upon some acts of Sederunt,—*1mo*, Discharging all solicitations to be made to the Lords of Session by the parties, their advocates, &c. ; see two old acts against it, one in July 1596, another in July 1657.* *2do*, That where the charger or pursuer is not ready to insist for that week, he shall be heard upon his application to the Ordinary; but if he do not crave a hearing during the time that the Ordinary who called it is in the Outer-House, then it must be enrolled of new in the end, and posterior to all the causes in the book of enrolment; else defenders shall be defrauded of all the benefit and certainty designed them by the regulations, and be put week after week to attend the pursuer's malicious delay and uncertain motions. *Vide supra, January 1677, No. 529, the same thing done.* The third was prohibiting the clock to be kept back at 12 hours, at any's desire whatsoever.

Advocates' MS. No. 644, folio 302.

1677. *November 3.* ANENT MINORS INCURRING PASSIVE TITLES.

A MINOR is convened upon the passive titles, to pay a debt owing by his father, and in the relevancy and probation it is condescended on, that his tutor intromitted with the maills and duties of the minor's father's lands, and applied them to the minor's behoof; which must infer *gestionem pro herede* upon the minor.

ALLEGED,—*Non relevat*; for tutors and other administrators *meliozem possunt facere pupilli conditionem sed non deteriozem*, and it were hard that their deeds should bind an odious passive title upon an apparent heir, not being his own deed, though it be converted to his utility; since *id intelligere non presumitur*, unless he were infeft in those lands; and the most he can be made liable in, is allenarly *in quantum minor locupletior factus est*, or to restore what he so intromitted with.

ANSWERED,—That a pupil or minor acting with his tutor or curator's advice, that so redintegrates his person, and supplies the defect and imbecility the law presumes in him, that *minorem representat majorem*; else creditors might be disappointed of their payment where the apparent heir was minor. Neither would this anyway evacuate the privilege of minority; for though the tutor's intromission was

* *Carfania impudentissima mulier causam prætoris edicto de postulando dedit, L. 1. paragrapho 4. de Postulando.* Some named Tolquhon, and his brother Thomas Forbes, as they who gave principal occasion to the making this act against solicitations.