2. It was DEBATED, Whether a father, or grand-father could be notary in a writ or right in favours of the son, or grand-child.

The Lords did demur upon these points; and thought fit, that before answer as to these, the reason founded on *lecto* should be discussed.

Page 34.

1667. *July* 15. ——— *against* ———.

EXHIBITION being pursued by an apparent heir, to the end he may advise, not only as to the writs in favour of the defunct, but such as were granted by him:

The Lords superseded to give answer as to the last member, until they should consider the Act of Sederunt; it being alleged by some of the Lords, That, by an Act of Sederunt, it was ordained, that no person should be forced to exhibit writs granted by defuncts in favour of himself, or his authors; except writs granted by parents, or husbands in favour of wives and children.

Page 38.

1668. *January* 7. SIR JOHN HOME *against* The FEUARS of COLDINGHAME.

IN a process at the instance of Sir John Home of Rentoun, Justice-Clerk, against the feuars of Coldinghame; the defenders offered to improve the executions.

It was ANSWERED, They could not be heard, unless they would propone the said allegeance *peremptorie;* but that the same should be reserved by way of action.

The Lords, for avoiding the multiplying of processes, obliged them to propone the exception of improbation *peremptorie:* but the same being *prior natura*, and competent to be proponed before any other *in meritis causæ;* and yet being now proponed *peremptorie*, in form of process, being the last of exceptions; —The Lords admitted the defenders to propone their other exceptions, and reserved that to the last place.

Page 52.

1668. *January* 15. M'KITRICK *against* ———.

THE prescriptions of reversions and expiring of legals, and the taking advantage of the same, are so odious; that the Lords inclined to find, that necessary debursements upon reparation of houses should not be allowed to a compriser, in a declarator to hear and see it found, That he was satisfied by intromission; reserving action to him for the same: But, before answer, they ordained the reporter to consider the debursements, and to report whether they were absolutely

necessary. This is hard in the point of law; intromission being to be understood *civiliter et cum effectu* of that which is free, all charges deduced.
Hay, *Clerk*.

Page 56.

1668. *February* 1. LADY TRAQUAIR *against* EARL of WINTON.

THE Earl of Winton, having right by assignation, to a bond granted by the Lord Sempil, did grant a translation in favours of the Lady Traquair, and the Lady Jean, another of his daughters, bearing warrandice from his own deed; and thereafter uplifted the debt. The said ladies pursued the Earl of Winton, as representing his grand-father, for payment of the sum; because the Earl, his grand-father, had uplifted it.

The defender ALLEGED, That the translation, being a donation of the father's in favours of his children, whereof he was master, was revokable; and that he had revoked the same, in so far as he had uplifted the said sum.

It was ANSWERED, That the said translation was out of his hands, having delivered the same to the pursuer's mother for their use; and that he was obliged to warrant the same.

The Lords thought, That the translation, being in the Lady Winton's hands, being in law *eadem persona* with the Earl, it was equivalent as if it had been in his own hands; and that he might destroy or revoke the same. But the parties, being of quality and of near relation, they did not decide this case; but recommended to some of their number to endeavour an accommodation.

Page 60.

1671. *December* 17. HALYBURTON *against* SCOTT.

A PROVISION, granted by a father to a daughter for love and favour, being quarrelled by a creditor upon the Act of Parliament 1621:

It was ANSWERED, That the father, the time of the granting of the said right, had an opulent estate beside, out of which the creditor might have been satisfied. And the Lords, before answer, having ordained that a trial should be taken of the defunct's estate; and witnesses being adduced to that purpose, it was found, That the defence was not proven. It appears that the defence was not relevant: and that a creditor is not holden to debate whether his debtor had a competent estate to satify his debt *aliunde;* and that debtors can grant no right without an onerous cause, until the debt be satisfied.
Haystoun, *Clerk*.

Page 63.