

twixt this Ker and some others of the disponder's creditors, the question was, If an infestment, granted for several sums of money, and made public as to some of the sums, if that was a public infestment.

The Lords found that an infestment being indivisible *quid*, could not *ex parte* be public, and *ex parte* not ; and therefore found the same public.

Act. Sinclar. Alt. Lermont. Referente Domino Advocato.

Advocates' MS. folio 59.

1668. *January 20.* LORD LYON *against* _____.

THERE was a comprising led at my Lord Lyon's instance against one Johnston, as lawfully charged to enter heir to his father : and he dying before the Lyon was infest upon his comprising, another serves himself heir to him who was last infest, and procures himself infest ; and both contending for preference, it was found that the person who was lawfully charged to enter heir, and comprised from, was so denuded by that diligence, that he who served himself heir, and was infest, could not be preferred to him who had comprised, though not infest till after the other's infestment was expedite.

Act. Maxwell. Alt. Lockhart. Referente Advocato.

Advocates' MS. folio 59.

1668. *January 24.* BOWAR *against* GRAHAME, minister at Inneraritie.

THEY found that the relict of the deceased minister might convene the entrant or the heritors for the price of the manse, either built or repaired ; notwithstanding the act of Parliament 1661 be expressed that the heritors ought to be bound and liable for that. It is true, before that act of Parliament entrants were infallibly liable to the relict or heritors ; and that act does not exclude the entrants from being liable, though it declares the heritors to be bound, and makes no mention of entrant ministers.

Act. Dinmuire. Alt. Thoires. Referente D. Staires.

Advocates' MS. folio 59.

1668. *February 4.*

ONE Mr. Wm. Somervell being condemned in a criminal court for usury, and having raised a reduction of the verdict of the assize, before the Lords of Session,

on error and iniquity committed by them; it came to be debated, if the verdict of an assize might be reduced on that ground before the Lords.

CONTENDED,—The Justice-depute being a Judge distinct and independent from the civil Judge, and the verdict of an assize being a sovereign sentence of a criminal Court, it could not fall under the compass of the Lords of the Session, or their review; and it is a novelty, and of a dangerous consequence, to reduce the verdict of a criminal assize. On the other hand ALLEGED,—That they craved only the verdict to be reduced as to the civil effects of it, and not as to the criminal.

This was an action extraordinary, and never heard of before; the same came not to a sentence, but was agreed.

Act. Harper and Wallace.

*Alt. Lockhart.
Advocates' MS. folio 59.*

1668. *February 4.* FARQUHAR *against* FARQUHAR.

PATRICK FARQUHAR being engaged in several sums of money, as cautioner for Sir Robert Farquhar, he raises reduction of these bonds as done by him in his minority and to his lesion.

ALLEGED, *Esto* he were minor and lesed, yet after he was major he had homologated these bonds, in so far as he was pursuing Sir Robert, the principal, his heirs, for his relief, and had gotten decreet *cognitionis causa*, and was to adjudge his estate therefore.

ANSWER,—Nothing could be called a homologation but an express approbation, or payment of annualrent, after he was major: because the event of the reduction might be dubious, and might take a time before it might be closed; and in the interim, the other creditors might prevent him in diligence, and prejudice him of his relief.

This was not decided. Nor do I remember that ever that point came to be debated before, If a major's craving relief of a debt contracted by him in his minority will import an homologation.

In this same process, found that women could not be adduced to prove minority. Likeas there was a joint probation allowed to the pursuer and defender.

Act. Lockhart.

*Alt. Dinmuire.
Advocates' MS. folio 59.*

1668. *February 4.* LADY CARLIPS *against* The LAIRD of Posso.

IN the case betwixt Lady Carlips and the Laird of Posso, it was found, that as an apparent heir, by the late act of Parliament, cannot buy an apprising of his father's estate, without being made liable to his father's debts, so the Lords did extend this statute to apparent heirs who buy comprisings against their father's