

1671. *February 13.*

Anent WARRANDICE in an ASSIGNATION.

OF old absolute warrandice in an assignation to debts did import that the debtor was sufficient and responsal; and in case it could not be got of the debtor, then the assigner was liable in warrandice to make it good; but now of late the Lords have found, in several cases, it signifies no more but that no other body has a better right to that sum than I have, and consequently you, who are my assignee; and that it is a true debt.

*Vide infra, No. 246, Nov. 10th, 1671. Barclay against Liddell.*

*Advocates' MS. No. 129, folio 89.*

1671. *February 13.*LORD HALTON *against* SCRYMGEOR.

THIS was a declarator of his gift of *ultimus hæres* to the deceased Earl of Dundee. Against which it was ALLEGED for Kirkton, That there could be no declarator, because by the very charter produced by them in process, there was a clause of substitution conceived in favours of the defender's goodsire, whereby failying of heirs-mail of Dudhop, the lands were tailyed to Kirkton and his heirs. *Item*, offered to prove by writs in the charter chest, (which had been given up to Halton upon a naked bill,) that he was within the ninth degree of consanguinity to the last Earl, and that all by the male line; for proving whereof he craved inspection of the said charter kist. This was denied him; and he was appointed to pursue an exhibition thereof against Halton, as accords, for making his specific sibness appear: and for the tailye it was broken since.

Upon which the gift was declared; reserving *ut supra*. This was thought hard.

*Advocates' MS. No. 130, folio 89.*

1671. *February 13.*

Anent REGISTRATION of SEASINES.

A SEASINE being quarrelled because not registrate conform to the act of Parliament; it was ANSWERED, It needed not, being a seasine of lands lying within burgh, viz. Falkland.

REPLIED, That Falkland was not a burgh royal, but only of regality. DUPLIED, They opponed the case of Mr. James Cheap against the town of Falkland, wherein it was found to be a burgh royal, though now it bears no burden with the same; and the truth is, they have a charter of erection in a burgh regal, only the whole inhabitants of the town, or their authors, stand oblig-