1671. *November* 21. HERIOT of Ramorney *against* ———.

IT being controverted betwixt Heriot of Ramorney and , where a man who sells land, is obliged to give to the buyer a transumpt of the evidents before the Judge Ordinary, whether they might be transumed before the sheriff of the shire wherein the lands lie, or rather before the Lords;

It was ALLEGED,—The sheriff being a pedaneous judge, the Officers of State (who must of necessity be called, where transuming is intended of his Majesty's charters and other writs under the great seal,) are not obliged to compear before him.

It was ANSWERED,—The calling of them was only *dicis causa*, and signified nothing. *2do*, If there were necessity for calling them, then it might be done even before the sheriff by letters of supplement.

It was REPLIED,—Since I had paid the full price and worth of the land, it is very just I should be pleased with the security; and, therefore, *ne quid scrupuli insit*, it should be done before the Lords; where, if any difficulty occur, the advice of men of law is at hand.

It was DUPLIED,—That *electio est debitoris*, and, therefore, he has the choice of the judge before whom the same should be done. Next, if they will have it before the Lords, then that the charger may bear what farther expense they will be at in transuming them before the Lords than they would be if they did it before the sheriff. They added, it was most ordinary to transume before inferior judges.

This being taken to the Inner House, the Lords found thir evidents behoved to be transumed before themselves: not because the Officers of State must be called, (for they would not dip on that at this time,) but because the buyer behoved to be satisfied with the security, and this made it more firm and uncontroverted: only they recommended to the clerks not to exact the full rigour of the regulation, (*viz.* L.3 for the sheet,) but to be gentle.

Sir G. Lockhart said the Lords were like to the miller of Carstairs, drew all to themselves. And truly this decision has no shadow of reason but the clerks' advantage.

Advocates' MS. No. 267, *folio* 114.

1671. *November* 23. SINCLAIR of Ratter *against* ———.

IT was debated in the case of Sinclair of Ratter against ———, if a man might pass by his father, who was infeft, and serve himself heir to his goodsire, who was also infeft, to the effect he might elude his father's creditors: or if the said passing over his father, and entering by his goodsire, be not a sufficient passive title to bind his father's debt on him, *tanquam gerens se pro hærede.*

It was ALLEGED,—It was not; and his possessing in right of his goodsire was at most but vicious intromission, and tied him only to restitution of what he had meddled with, or in *quantum lucratus est.*