

1670. *January 20.* EARL of KINGHORNE *against* LAIRD of PITTARO.

THE deceased Earl of Kinghorne having left a bond blank in the creditor's name, in the hands of Alexander Keith, who was the Earl's agent, containing the sum of 1000 merks; this bond lay in Alexander's hands a long time while he was in life, and being found amongst his papers long after his decease, his wife delivers it to the Laird of Pittaro, who fills up his own name therein, and gets decret against this Earl of Kinghorne, on the passive titles. Which being suspended, and the way of the conveyance of it being referred to Pittaro his oath, he confessed the truth of the business, in manner above narrated. Whereon the Lords assoilyed from the decret: though it was ALLEGED that Alexander Keith was creditor to the Earl, and the Earl his debtor, in the like sum.

*Act. Lockart. Alt. Cunyghame.*

*Advocates' MS. folio 61.*

1670. *February 20.* DAVID KINLOCH *against* JAMES OGILBIE of Clunie.

IN the case David Kinloch against James Ogilbie of Clunie, FOUND, A contravention of lawborrows may be turned in a declarator of property, where the deeds are not founded on violence, but on damage done to the property and lands. *Item,* That the penalty of contravention belongs to the heir of him who was infest in the lands contraverted; and the charge being given by Bandoche's father, That the action of contravention did belong to his heir. But he was ordained to warrant the defender at the executor's hands.

*Act. Dinmuire. Alt. Falconer.*

*Advocates' MS. folio 61.*

1670. *February 20.* LORD BALMERINO *against* the EARL of AIRLIE.

IN the reduction of the disposition of the whole estate of Couper, made by the deceased Lord Couper, in favours of his lady, now Lady Lundors, pursued by my Lord Balmerino *contra* the Earl of Airlie; FOUND that the reason of *lectus ægritudinis* was a privilege not personal, nor competent only to the apparent heir; but it was real, and competent likewise to the creditors of the apparent heir, who had comprised from him, as lawfully charged to enter heir. In this process also there was a large debate anent the nature of my Lord Couper's sickness, the time of his making the right aforesaid in favours of his lady; and whether the coming to kirk and market was the only allowable presumption in law of health, or if sanity might be made out by acts equipollent to going to kirk and market: the Informations whereof I have set down at large. Upon thir debates, the Lords have not as yet given their interlocutor.—There was a practise founded on, in the 1647, betwixt *Syme and Grahame*, which stumbled the Lords: which was