

1670. *June 16.*

ANENT SEASINES.

FOUND, That *falsa designatio* of lands in a charter or seasine *non obest nec vitiat*, the said lands being otherways sufficiently demonstrated as by the heritor, superior, their bounding, the parish wherein they lie, &c. The error was that the seasine bore they lay within the Sheriffdom of Wigton, whereas they lay in Dumfries-shire.

Advocates' MS. No. 18, folio 73.

1670. *June 16.*

ANENT MINORS.

WHEN a minor or pupil is lawfully charged to enter heir, &c. their tutors or curators need not to be called, in regard it is not a fact prestable by them.

Advocates' MS. No. 19, folio 73.

1670. *June 17.* The VASSALS of DUNYKEIR *against* the LAIRD.

JOHN WATSON of Dunykeir, or Pathhead, having set several parts of his lands in feu to sundry persons, with the servitude of casting feal and divot in a large adjacent moor, which belonged to him in property, in the said whole moor, or in any part thereof they pleased, for beiting and repairing of their houses, &c. Thereafter Watson feus out the said moor to others, in property, without mentioning the foresaid servitudes; at least grants new servitudes therein, by which the former feuars, his tenants, finding themselves enormly prejudged and lesed in their privilege of casting, &c. in the said moor, in respect the same was exhausted and surcharged, *viz.* burdened with more than the said moor was able to afford; they raise a declarator against the heritor of the moor, their master, to hear and see it found and declared that it shall not be lawful for him for to burden the said moor to the prejudice of the prior servitude, constituted with his own consent, (and that for most onerous causes, *viz.* sums of money paid to him therefore,) in favours of thir pursuers; and that his power of burdening the said lands may be expressly restricted, that he do nothing in the said moor which may be prejudicial to the servitude already granted to them; and what he hath already done, of that kind, the same may be declared null and void, especially considering that by their feu infeftment *unaquæque gleba iis serviebat*.

Against which declarator it was ALLEGED, *1mo*, That it was a mere novelty, inferred an odd conclusion, and was *res pessimi exempli* for tenants to seek such a declarator against their master. *2do*, No process at the instance of such of thir tenants against the writs of whose lands the heritor has obtained certification. *3tio*, No process at the instance of those who have bound themselves under their hand, to the defender, that they shall never quarrel any posterior