This reply was FOUND RELEVANT. Neither was it respected that the sum in the bond was 2000 merks, and so a matter of importance; for my Lord Stair called to mind where the Lords *in præsentia* had sustained a bond for L.500 Sterling, where the party subscribed only by a mark like to a craw-tae, because of the reply of use, though he was averse from it himself.

Act. Lermont. *Alt.* Yeoman.

Advocates' MS. No. 38, *folio* 77.

1670. *June* 25. WALKER *against* RONALD.

THIS was an action for proving the tenor of a writ that was lost, wherein it was ALLEGED They behoved to be clear and special *super casu omissionis*, otherwise the bond must be presumed not lost but retired.

To which it was REPLIED, it was impossible to be clear on that, viz. what way, in what part, and at what time, he lost it; for if a man remembered these circumstances, he needed not prove the tenor, but after some search he might recover the very writ. The *casus omissionis* here was, that the party to whom the bond was granted his wife foolishly and recklessly had burnt the same at a candle, at which time there being none present, and so none could depone thereon but herself.

Advocates' MS. No. 39, *folio* 77.

1670. *June* 21 and 29. ELEIS of Southside *against* DR. CARSE.

June 21.—THIS is a pursuit for payment of a debt against this defender, as representing the debtor; 1*mo*, In so far as he being his apparent heir, he meddled with his charter-kist, which, by the constant practice, infers gestion. 2*do*, As heir, he made a revocation of all deeds done by the debtor, his predecessor, which might tend to his prejudice. 3*tio*, He called the comprisers to count and reckoning, offering to prove them paid by their intromissions, and more than paid; and so craved the superplus to be given back to him.

Against his meddling with the charter-kist, it was ALLEGED, 1*mo*, That Dr. Carse, (though a Scotchman,) yet, from his infancy almost, having been bred, and having resided in England, (being one of the king's chaplains,) upon the death of his friend, he came down to Scotland; and being altogether ignorant of our laws and customs, he simply, without any intention of being heir, took inspection of some writs that were in the defunct's charter-kist, and this, within the year allowed to apparent heirs for deliberation: and within the year also, he offered the charter-kist back to those who had interest, which they refused. Which kind of meddling being so innocent, and also within the time prescribed by law, can in no equity nor reason make the Doctor liable to the defunct's debts. To the second *non relevat* a revocation, unless ye will say that something followed