

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 tailyie 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-

ed to the King, each of them, to have conveniency and accommodation for men and horses every day, it having been the King's palace; for which causes he gave them all the privileges and immunities of a burgh royal. *Vide infra, No. 331.*

*Advocates' MS. No. 132, folio 90.*

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Anent APPRENTICES.

WHERE a prentice was bound with a master by the space of five years, more or fewer, and either the master or the prentice dies before the expiring of the prenticeship, it has been questioned whether the whole prentice fee can be exacted yea or no; and the Lords have sundry times found, it being a contract *bonæ fidei, et bonum et æquum* claiming much part therein, the prentice fee should be divided *pro rata temporis* that the prenticeship subsisted, and no longer. *Vide infra, No. 256. Archibald Hyslop. Vide Paulum, in l. 4, p. 5. de Statu liberis. Vandum libro 1. varia: Quæstionum. Infra, July 1677. No. 628.*

*Advocates' MS. No. 133, folio 90.*

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1671. *February 21.*

Anent APPRENTICE FEE.

THIS is an action at a Sutor's instance in the Potterrow, *against* ———, who was cautioner for payment of the prentice fee in the indenture, to pay it. Against which it was ALLEGED, That he could not be heard to seek this prentice fee, because it was offered to be proven, (and a term behoved to be assigned for proving it, though he was in suspension, because it was *facti*,) that the boy staid not half a year with him, and that through his default, who did beat him till he was both blea and bloody, and to the effusion of his blood; and his cruelty was so great, that the boy durst stay no longer with him: and albeit moderate chastisement be permitted to a master, *attamen inhumanum et nullatenus Christianum est sævire in servos, l. 5. p. ult. et l. 6. D. ad legem Aquiliam.* To which it was REPLIED, That in fortification of his charge, he offered him to prove that he used him no otherways than the other sutors in the neighbourhood use their prentices.

My Lord Advocate, before answer to the relevancy, appointed a conjunct probation to both.

*Act. Charg. Beaton.*

*Alt. Harper.*

*Vide Feb. 18, 1680.*

*Advocates' MS. No. 134, folio 90.*

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1671. *February 21.*

————— *against* CORLEY, &c.

ONE having an infestment of annualrent out of two tenements of land lying in the Canongate; and pursuing a poinding of the ground against Couley, and some other possessors.