

custom of coming to this mill, following upon an act of Court astringing them thereto, which is a legal compulsitor, will never be reputed a voluntary act, but must be presumed to be in obedience to that legal compulsitor.

The Lords sustained the act and possession following thereon.

*Advocates' MS. No. 171, folio 98.*

---

1671. *June 14.*

Anent ADJUDICATIONS.

FOUND that as it is a nullity in a comprising to be led against one that stands not infest; so *pari ratione*, adjudication must be null if deduced upon a renunciation of one who is lawfully charged to enter heir to him who cannot be instructed ever to have been infest.

*Advocates' MS. No. 172, folio 98.*

---

1671. *June 14.* COUNT and RECKONING at the instance of an apparent heir.

AN apparent heir having intented a summons of exhibition *ad deliberandum*, as also a declarator of the extinction of an apprising, led many years ago, by intromission with the mails and duties within the years of the legal, which last would resolve in a count and reckoning, it was ALLEGED,—That such an action could never be sustained at an apparent heir's instance, and that it was altogether a novelty. ANSWERED,—That whatever was the reason for sustaining exhibitions *ad deliberandum* at the apparent heir's instance, the same very reason militated here for the sustaining this action of count and reckoning, because *non constat nisi ex eventu litis num hæreditas erit damnosa necne*; and for the objecting it is a novelty, that is altogether false, seeing Durie has some practiques of it either the very same or very contingent. *See Dury, 16th March, 1637, Home against Blackader; 25th February, 1637, Hepburn. Vide contrarium 16th March, 1637, Edmondstone; item 11th February, 1635, Muire.*

The Lords ordained the practiques to be produced, and inclined exceedingly to sustain the summons.

*Advocates' MS. No. 173, folio 98.*

---

1671. *June 14.* LORD LOVAT and LORD KINTAILL *against* The LORD MACDONALD.

THIS was an action for count and reckoning upon the act of Parliament 1661, against a proper wadsetter, for repayment of the superplus of the mails and duties of the lands given in wadset, more than will perfect the annualrent of the sum whereon the wadset is made redeemable. This was a piece of land wadset near