

1671. *June 29.*

Anent PRESUMPTION OF DEATH.

AN allegeance of death of one that is known to have been out of the country, being admitted to probation; *queritur*, I producing his wife's contract of marriage with another man, if that will be reputed a sufficient probation that he is dead? I think it will, providing always the wife has used the solemnities appointed in such a case by law, *viz.* waited seven or ten years without hearing from him; then caused cite him at the market cross of Edinburgh, Pier and Shore of Leith on sixty days, which being elapsed, then got a declarator of his death; after which he will be reputed dead, though *in rei veritate* he may be yet in life. But if it be malicious desertion, then not this method, but the order prescribed in the 53d act of Parliament 1753, is to be observed.

Advocates' MS. No. 186, folio 100.

1671. *June 30.*

Anent ADVOCATIONS.

MY Lord Gosford refused to advocate a cause from an inferior judge, upon the reason of iniquity committed by him; because, before the intimation of the advocacy, litiscontestation was made, and they had no reduction thereof; so that he found in such a case, the act of litiscontestation must be reduced. *De hoc cogitandum.*

Advocates' MS. No. 187, folio 100.

1671. *June 30.*

Anent ACTIONS OF DECLARATOR.

A DONATAR to an escheat having cumulated both his general and special declarators in one summons, the Lord Gosford refused to decern in the general, and make an act in the special *simul et semel*, (though Hope tells that as the practice of his time;) but decerned in the general, and ordained them to enrol of new for the special.

Advocates' MS. No. 188, folio 100.

1671. *June 30.*

Anent DENUING OF LIFERENT BY CONSENT TO ALIENATE.

FOUND that a woman's consent to an alienation of lands provided to her in liferent, prejudices her not thereof, because a renunciation is the only *habilis modus* for denuding her of her right; far less then will a consent given by the hus-