

for warrandice; because *nondum constat* whether he will evict or not, or how much, whether it will be in whole or in part; and till the *quantum* be known, there can be no warrandice decerned, because that must be proportionate to the eviction.

To the next, anent the obtaining his son's consent; that is *factum speciale et quidem alienum*, and in the condition he is now stated with his son, altogether unprestable by him; so that in law *non tam præcise tenetur* for performance; but all that can be sought of him is *damnum et interesse*, sustained by them through his not obtaining his son's ratification, which how soon as they liquidate it, he is content to pay.

This was found relevant. And because my Lord Craigie inclined to sustain this action, at least *pro declaratoria juris*, in case Mr. Dick prevailed against Murdoch in his reduction, it was urged, that such a sentence being general would be altogether useless and insignificant; and that warrandice upon eviction being *actus legitimus*, it neither admitted *diem* nor *conditionem*. And caution being craved of Sir Andrew, it was judged by some very unreasonable till the distress were manifest.

*Advocates' MS. No. 207, folio 103.*

1671. *July 8.* The COMMISSARIES of Edinburgh *against* The SHERIFF and his DEPUTES.

THE commissaries of Edinburgh, and the sheriff and his deposes falling in contest about that seat in the north side of the hall, each of them laying claim thereto as their own; and the matter being brought before the Lords by a bill given in by the commissaries; the Lords found, that before the building of the Parliament house, they had different seats, and that they so continued till both the offices came to be in person of one, viz. of Claud Hamilton, in the beginning of the English, who having done with the one Court, sat still and kept the other; and that sinsyne the sheriff deposes have used that seat through tolerance from the commissaries; and therefore find they may either take their own way for getting a new seat; or if they please they may sit down and hold their court at twelve o'clock when the commissaries are up. If there had been an active sheriff, (he being both far more honourable and far more ancient than the commissariot,) it may be thought he would not have lost the interlocutor.

*Advocates' MS. No. 208, folio 103.*

1671. *July 8.* Anent GIFTS of ESCHEAT.

A LORD of regality having gifted the escheat of one who lived within the regality, and the donatar seeking general declarator; it was ALLEGED,—The gift is null; because the person was denounced and registrate at the horn before the erection of the regality; and so that escheat belongs to the king, and not to the