Lord of the regality; unless he can show where the erection gives him a special right, not only to escheats that should fall thereafter, but to all bygone escheats not yet gifted by the King's Majesty. ANSWERED,—This escheat must fall under his erection, though general; unless they could say gifted before.

Then ALLEGED,—The denunciation was null, because not used at the head burgh of the regality. ANSWERED,—He could not do that, because at that time there was no regality.

Craigie inclined to find he had no right to bygone escheats, except it were expressed in his erection.

Advocates' MS. No. 211, *folio* 103.

1671. *July* 8. Anent PASSIVE TITLES.

ONE being pursued *super titulis passivis* to pay a debt owing by his father, he alleged absolvitor from the titles as heir, successor *tit. lucrativo*, lawfully charged to enter heir, or gestion *pro hærede*, and such like; because he offers him to prove he had an elder brother in life who would only be heir, *et adhuc vivere præsumitur, nisi mors allegetur*. ANSWERED,—They offered to prove he was killed at Chattam.

This was found relevant; and the Lord Craigie declared he needed not adduce witnesses thereon, but that *testimonia* might suffice in this case.

Then craved absolvitor from that vitious intrommitter, because offered to prove there was an executor confirmed; as also absolvitor from that of executor, because they condescended upon another who was executor.

This was found relevant also.

Advocates' MS. No. 212, *folio* 103.

1671. *July* 5, 8, and 11. MAXWELL of Nether Pollock, *against* KIRKCONNELL MAXWELL.

July 5.—KIRKCONNELL MAXWELL being pursued by Maxwell of Nether Pollock upon the passive titles, for payment of a debt owing by his father, and specially on the title of gestion as heir, in so far as he intromitted with the mails and duties of his father's lands; ALLEGED,—That intromission can never infer the passive title of behaviour, because he can ascribe it to a very specious title, viz. to a comprising led against his father, whereof he had acquired the right, and in virtue whereof he intromitted. *Vide infra, June* 1677, *No.* 575, [*Kincaid* against *Gordon, June* 1677.] REPLIED,—This comprising being come in the person of the apparent heir, whether it was led by a conjunct person or no, it must be presumed to have been *in fraudem*, and so will never save from a passive title. DUPLIED,—All that can be subsumed on that act of Parl. 1661, is, that it shall