1671. *July* 14. LADY CASSILS *against* The EARL of ROXBURGH.

MY Lady Cassils pursuing the Earl of Roxburgh for payment making to her of the sum of 10,000 merks per annum, of additional jointure, over and above the 10,000 merks which was provided to her in her contract of marriage with my Lord Ker, her first husband.

ALLEGED for the Earl, That it was *donatio inter virum et uxorem*, and so was null of the law. ANSWERED, Ought to be repelled, because it was *morte confirmata*. REPLIED, That her husband revoked it in his own lifetime, in so far as by his latter will and testament, he entreated his father would be pleased to instate his wife in a jointure of L.10,000; which must be interpreted an evident revocation of the additional jointure of 10,000 merks, which with her provision by the contract matrimonial made up 20,000 merks. DUPLIED, 1*mo*, The conception of the words will never import a revocation, which ought ever to be clear and expressed. But 2*do*, *Esto*, they did, the Earl can never be heard to found any thing thereon; because it is offered to be proven, that the old Earl, father to her husband, chose rather to ratify the additional jointure, and to secure her therein, than to follow his son's desire in his latter will; and that because he found the first much more easy for him than the last: in regard her additional jointure was not payable till after the old Earl's decease. But for the L. 10,000 spoke of in the testament, it would have been due immediately after my Lord Ker, her husband, his decease: which homologation and election made by the said Earl, *funditus* takes away all revocation if there any was. But to show how square the lady is, she is content to restrict herself to what jointure is contained in the testament, for by that means she will have right to 5000 merks yearly, (which she never got,) for all years intervening between the decease of her husband and her goodfather. Which claim will come little short of what she is now seeking.

The Lords found no revocation.

Then they ALLEGED she had promised never to exact it. Which being referred to her oath, she deponed *negative*.

Then ALLEGED she was paid; this she also denied upon oath.

The Lords repelled all the defences proponed for the Earl, and decerned conform to the desire of the summons.

Advocates' MS. No. 223, folio 105.

1671. *July* 27. Lord RUTHERFORD *against* Captain RUTHERFORD.

IN the foresaid improbation mentioned at No. 101, betwixt my Lord Rutherford and Captain Rutherford, the Advocates in their reasoning entering upon the matter, the Lords ordered Robert Hamilton, macer, to go and bring the defender out of the tolbooth, where he had lain of a long time before, to their presence, in case there should any thing occur whereon he might be interrogated by them. While he is coming over, he pretends there were some papers in Colliston's chamber in Besse Wind which would be of great use to him if he took them with