tions of sundry witnesses for both parties were taken and reported. The Lords falling to examine the witnesses, there were many things objected against Grubet's witnesses: some of them common beggars, others living on the poor's box; one got a boll of meal from Grubet to depone; one at his death declared much sorrow, and craved leave to rectify the deposition he had made in that affair, and several of them were vitiated and blotted. The Lords found they would re-examine the witnesses yet on life, and any others that either party would adduce.

In this process there was a declinator given in against the advocate, because the pursuer and he had married two sisters. The Lords did not receive it; but it miserably cruciated the advocate to see his justice called in question. In 1678 Newbyth sat and voted in Mr. Patrick Home's cause, though he had married his brother's daughter. *Infra, July* 1676, *No.* 492, § 3.

Advocates' MS. No. 283, *folio* 119.

1671. *December* 5. WILLIAM DUFF *against* FORBES of Cullodin.

THIS was a competition about the rights of some fishings which held feu of the burgh of Innerness.

ALLEGED, Against Cullodin's seasine thereof that it was null, because it proceeded upon a resignation in the hands of the magistrates and council of the town of Inverness, and the seasine was only subscribed by one bailie and the clerk, (for by an inveterate custom past all memory of man, used within this burgh, contrary to the use of all the rest of the kingdom, the feuars and vassals of the said burgh get no charters, but allenarly a seasine on their resignation, signed by the haill magistrates of the town;) whereas, by the custom of the said burgh, it should have been subscribed by the haill magistrates, as Duff's is.

To this it was ANSWERED, That the manner how Duff's seasine was given was as much contrary to the common form received in other places, as the manner wherein Cullodin's was given, seeing he had no charter to shew no more than Cullodin. And as for that pretended nullity of his seasine being only signed by a bailie and the clerk, he offers to prove it is a more general, more universal, and more received custom in the burgh of Inverness than that other, of being subscribed by the haill magistrates.

Whereupon the Lords granted a commission for trying which of the two was the custom of that burgh, and if both of them were in use, which of them predominated and prevailed most; which being reported, and the report coming to be advised, the Lords found more instances adduced of seasines given after the manner of Cullodin's than of the other, (one bailie doing it *ex presumpto mandato reliquorum,)* and, therefore, declared they would sustain Cullodin's seasine, and all seasines given before the date of thir presents, either after the one manner or the other, they being both equally informal, because *in talibus error communis facit jus;* but *pro futuro*, they would make an act of sederunt, inhibiting all such customs of giving seasines which are either contrary to, or derogatory and exorbitant from the common and municipal law; under certification, that whatever resigna-

tions or seasines shall be made otherwise, they shall be void and null in themselves. *Vide infra, No.* 370, [*Suitty* against *Bell, July* 1672,] *and* 381, [*Magistrates of Inverness* against *Forbes, &c. Dec.* 1672.]

Then Duff offered to prove simulation, because it being a disposition *inter conjunctas personas, videlicet,* Cullodin and his brother, it wanted onerous causes. To this it was ANSWERED, — That the disposition bore for onerous causes. *2do,* He was content to make faith upon them. *3tio,* If this would not satisfy, he offered to produce the bonds and discharges of debts he had paid as cautioner for his brother, far above the worth of their fishings.

The bonds being produced, they offered to prove one of the bonds were included in the other, and so they were not distinct sums.

ANSWERED, The dates, terms of payment, and all are different.

They likewise objected simulation, on this head, that of purpose he caused his seasine only be subscribed by one bailie, and kept beside the clerk a twelvemonth after, that it might be latent and come to the knowledge of few, and so the lieges not knowing thereof, might be ensnared to contract with his brother. ANSWERED, It was so far from being collusion or design, that the clerk being his enemy, kept it from him against his will, and he was forced to charge him with horning ere he could get it up.

The Lords ordained Cullodin to depone upon this last allegeance, who altogether denied it.

Advocates' MS. No. 284, *folio* 120.

1671. *December* 5. ANENT INTERRUPTIONS OF PRESCRIPTION.

I HEARD it doubted amongst the advocates, whether or no a bond or evident was prescribed, whereon nothing was done within the forty years but a naked charge to enter heir raised and executed, or if the said charge was sufficient to interrupt. I humbly think it was not a sufficient interruption, because the act of Parliament seems to require an express citation provoking to judgment; now a charge to enter is not a judicial act but only preparatory. *2do,* Such charges are general, and seldom condescend on the special actions the charger has to intent; and, therefore, seem not to induce *malam fidem,* unless we would say that there was nothing else betwixt you and me save this right now questioned as prescribed. But the 10th act in 1669 clears what interruptions are lawful now; for, in time coming, they must be citations executed by messengers at arms, and must be revived every seven years. *Vide supra, number* 215, *(July* 11, 1671, *Macraw* against *M'Donald;) and* Gaillii *observationes, libro observat.* 67 *and* 76.

Advocates' MS. No. 285, *folio* 120.