solvitur et jus accipientis; and the escheat was not declared, and so he had no title whereto he could ascribe his possession, but only that disposition now reduced *ex capite vis et metus:* But reserved to the Duke all his other pretensions on the land. Some cried out on this interlocutor.

Advocates' MS. No. 662, *folio* 309.

1677. *November* 27. CARSAN *against* MAXWELL.

CARSAN obtains a decreet for making arrested goods forthcoming, before the Stewart of Kirkcubright, against Maxwell; who suspends,

1*mo*, It bears no dispensation. ANSWERED, The defender was compearing in the decreet, and so had acknowledged, founded, and prorogated the jurisdiction, without proponing that dilator; *et primus actus judicii est judicis approbatorius.* And it was within ten days of a head-court, at which time inferior judges need no dispensation. REPLIED, The compearance is disclaimed as officious, simulate, and patched up; and the decreet bears not that the procurator compearing for him had a mandate. DUPLIED, A mandate was presumed, and the decreet needed not bear it. Yet see *supra*, No. 576, *M'Min* and *Newlands*, [19th June, 1677.]

Their second and third reasons of suspension were, that the decreet was intrinsically null, because it bears defences were repelled, and does not tell what they were, only because the judge knew them to be frivolous and dilatory. *Item*, that compensation was proponed and repelled.

But the reason of this was because it was proponed generally, without a special condescendence whereon the compensation was founded. I offered to admit any relevant exception of compensation, or otherwise, providing it were instantly verified. Which they failyieing to do, after several side-bar callings, the letters were found, by my Lord Strathuird, orderly proceeded.

Advocates' MS. No. 663, *folio* 309.

1676 and 1677. JOHN HADDOWAY *against* ——— INGLIS and WILLIAM SOMERVELL.

1676, *December* 12.—IN an action for maills and duties, pursued by John Haddoway, of some lands beside Douglas, compeared one Inglis and Mr William Somervell, and competed upon another infeftment; wherein possession being admitted to Haddoway's probation, he, for proving his infeftment was clad with possession before their right, produced, 1*mo*, A discharge of the feu-duty from the Marquis of Douglas, superior. The Lords found, at the advising, this alone was not a sufficient proof of possession. 2*do*, He produced a holograph discharge, granted by him to the tenant possessor of the land of his year's rent.

The Lords found such discharges were not probative of any man's possession, because it did not prove *quoad datam*, and might have been recently granted after

Inglis's right; but the Lords allowed him to adminiculate the date of it by the tenant's oath.*

Whereupon the tenant compearing, the other party declared they resiled from his oath, and deferred it to Mr Haddow's own oath. It was contended, that could not be, since the oath was deferred to the tenant for astructing the reality of the date of the discharge, as it bore by the Lords and not by the party; and so could not be altered or resiled from, or deferred back to Haddow's oath. However, Mr Haddow being content, on oath asserted the discharge was of a true date, and was then subscribed, and he got the rent. But they put in another interrogatory, viz. if it was then delivered to the tenant, or ever became his evident. He refused to answer thereto, as not pertinent.

However the Lords, on a bill given in by Inglis, ordained him to be examined on that interrogatory; and a day being assigned to him to appear, he failed, being hindered by the great storm; so the term was circumduced against him, and the decreet hastily extracted the day after he came to town. What straitened him was, that after he had subscribed the discharge, he told the tenant he might have use for it to astruct his possession, and therefore would keep it. *Quæritur*, if this will equivalently amount to a delivery *per fictionem brevis manus*, since there was no simulation.

Inglis farther craved to be preferred, because he had an inhibition executed against Haddow's author before his right, and thereon had a reduction depending. Which the Lords receiving *hoc loco* by way of exception, we were forced to propone, 1*mo*, against the inhibition, that the executions were false, and offered to improve them. 2*do*, That they designed not the party inhibited his dwelling-house. The Lords permitted them to take up their executions as to that part and mend them, they abiding at it. 3*tio*, That it was still null, because it did not bear that a copy of the letters of inhibition were affixed and left at the Market-cross, as is done in hornings and other such solemnities. ANSWERED,—Not essential. The President called it a new point; and the Lords, before answer, ordained both parties to produce either practicks, if any were, or executions of inhibitions, to see whether that custom be more frequently used and inserted or omitted; and Haddow having produced ten or twelve he had borrowed from messengers and others, they all bore a copy left at the Market-cross. See the point of law urged from many parallels in the information.

The Lords demur what to find as to bygone executions, whether that informality shall annul them or not; but, *pro futuro*, on the 20th day of December, 1676, they made an act, (and yet I find it not inserted in the sederunt books,) that in all time coming the executions of the publication of inhibitions shall bear a copy to have been affixed on the Market-cross, otherwise they shall be null.

The President's manner is, when any new point occurs to be decided, he runs over all the practicks new and old, but particularly since the King's restoration in 1661, to see if he can find it either decided already, or any parallel or contingent help; which speaks his indefatigableness.

Advocates' MS. No. 520. folio 270.

* And thus, in March 1677, Sir Jo. Cunygham advised the renewing of Mr Jo. Ramsay, minister at Markinch, his holograph disposition to David Ramsay, because it would not prove *quoad datam*, and so would be presumed to be done *in lecto*, unless it were adminiculated by persons that saw it and read it before his sickness in his *liege poustie*; and the proving it to be his hand-write is not enough.

1677, *November* 29.—In the foresaid action mentioned *supra*, [No. 520.] between John Haddow, and Somervell, and Inglis, decreet having been given forth against the said John, upon a circumduction of the term, for his not compearing to depone anent the delivery of the discharge; he presented a bill of suspension; which being debated before Reidfurd, and reported by him, the Lords reponed John Haddow again to his oath against the said decreet, because he was impeded *vi majore* and by the storm from coming in; and that the decreet was disconform to his oath, decerning him for more years than he had possessed, and for a greater duty than he had acknowledged by his oath, notwithstanding they offered to restrict it to the precise years and quantity mentioned in his oath.

Of this decreet we had also raised a reduction; and which being called by the order of the roll, and insisting that the defender might take a day to produce the decreet, it was ALLEGED, they would take no day, because it being a decreet *in foro contradictorio*, the defender is not bound to produce it, though he hath extracted it, but the pursuer is bound to extract it when it is a decreet *parte comparente* before the Lords, and to produce it himself. But after the Lords reponed John Haddow, we had no use for our reduction.

Advocates' MS. No. 665, *folio* 309.

1677. *Nov.* and *Dec.* OLIPHANT, &c. *against* HAMILTON of Wishaw.

Nov. 30.—HAMILTON of Wishaw's case was debated, viz. He acquires a right to some apprisings on Antonia Brown of Fordell's estate. She has right to redeem by law, and our act of Parliament 1621, (because she was then minor,) any time till she be twenty-five years old; and the legal does not expire against them till then, being yet *intra quadriennium utile*. John Oliphant, being another creditor of hers, aprises the legal reversion from her of Wishaw's apprising; and John dies, and leaves a child behind him minor. Antonia Brown becomes not only major, but her twenty-fifth, and *quadriennium utile*, expires. Oliphant's heir, the co-creditor, and other appriser, who is minor, uses an order of redemption against Wishaw; and when he comes to seek a declarator upon his order of redemption, Wishaw's defence was, that his order could not be declared for redeeming him, because before that order was used his legal was expired by A. Brown's majority, and arriving at twenty-five. ANSWERED,—Antonia was denuded of the reversion by Oliphant's comprising, and he stated in it; and, since his heir was minor, the legal could not expire against him neither, according to the sound principles of law in favours of minors.

The question was, if a co-creditor's minority stopped the statutory prescription of the ten years legal reversion in apprisings from expiring, as well as the minority of the debtor against whom it was led did.

December 4th.—The Lords advised this case, which is altogether new, and not formerly decided, *et omnes una voce, excepto* D. Castlehill, found the minority of co-creditors, or other singular successors to the minor, (who had aprised the minor's right it may be,) stopped the legal from expiring; though the act of Parliament 1621 seems only to mean the debtor's universal successors as heirs. However, this may hinder an apprising from expiring for forty years toge-