the kingdom. This defence was found relevant. *Vide infra*, [*No.* 251, *Nov.* 11, 1671, *Mathy* against ———]. *Advocates' MS. No.* 243, *folio* 110.

1671. *November* 10. CHRISTOPHER LE NOIR, Frenchman, *against* JOHN BROWN, Younger and Elder.

THIS was a summons at this stranger's instance, bearing, How he having come to Scotland upon his affairs, and being kindly entertained by this John Brown, the factor, and invited sundry times to dine with him at his house; one day after dinner, the father declared by his son (who was interpreter betwixt them, Le Noir understanding no Scots, and the father having no French,) *that he would* very gladly his son should merchandise with him; and if at London he should furnish him with watches or any commodities of that kind, he should not repent it. According to which communing, young John Brown having come to London, and received from the said Le Noir, in trust, near L.200 Sterling worth of merchandise, he now pursues both the father and the son for making payment of the said sum to him; the son as having received the ware; the father as having encouraged him to trust his son, and promising he should not suffer him to be a loser; so that certainly *secutus est fidem patris*, yea the half of this would have sufficed in England, (whose customs we follow where we have none of our own,) to make the father liable: If ye be but present with a man when he takes off merchandise it will bind you; but I think this is only if you say the party is sufficient. And for farther security, he arrests in the father's hands sundry sums of money, as alleged, owing by him to his son, by virtue of his mother's contract of marriage.

ANSWERED,—The first part of the libel is wholly irrelevant, unless they say letter of advice, bill, or some other express warrant or promise, that whatever he should furnish his son should be allowed; and as for the pretended words libelled on, they are so far from inferring any obligation against the father that they deserve no answer.

The Lord Newbayth was clear to assoilyie from the summons, as irrelevant. The last part he sustained, and ordained the contract of marriage to be exhibited.

Vide infra, November 8, 1676, *Kinneir, No.* 502.

Advocates' MS. No. 245, *folio* 110.

1671. *November* 10. NICOLL *against* HUNTER.

A BOND was craved to be reduced upon this reason, That it was granted *in lecto ægritudinis*, in so far as the granter, the time of the making thereof, was affected with the pest, was enclosed upon that account, never came furth, but within some three or four days thereafter departed.

The Lords assoilyied from the reason, as not relevantly qualifying death-bed, though the bond was *probatio probata* to itself, narrating his sickness of the

plague was the cause why he made the same. Yet Craig seems to be of the other opinion, page 86. *Advocates' MS. No.* 244, *folio* 110.

November 10, 1671.—HAVING more ripely considered the reason of reduction proponed *supra* betwixt Nicoll and Hunter, at number 244, it seemed to deserve the Lords' answer; for though *tempus pestis* be *tempus privilegiatum*, and so *testamentum factum tempore pestis non requirat septem testes, et alia quædam habeat privilegia*, yet there is no law or practice in our country allowing them to dispone an heritage after they are affected; and there is reason for it. If a fever incapacitate a man from alienation of his real rights, much more should *febris pestilentialis* do it, since all the reasons inductive of that law have place there, *videlicet, insanitas mentis*, solicitation of friends, &c. And Craig *ubi supra* is so clear in it that there is no room for any doubt, for (which is more) though he be *intactus*, if the family be infected, he concludes him incapable of making any real conveyance. *Advocates' MS. No.* 248, *folio* 111.

1671. *November* 8 *and* 11. SIR LAURENCE SCOT *against* DUKE OF HAMILTON.

November 8.—SIR LAWRENCE SCOT, sometime of Clarkington, as having licence, pursues Duke Hamilton for sundry annualrents of the principal sum of 26,000 merks owing by Duke William to Sir William Scott his father, who died in 1656.

ALLEGED, The Duke must have defalcation of eight years annual rent, indulged to the forfaulted persons the time of the usurpation; which is founded first on an act of Parliament, granting commission to sundry persons for trying and taking probation upon the losses of the several forfaulted persons, and then on an act of Council, finding the losses of the house of Hamilton to have been so great that they deserved the said benefit. To which it was REPLIED, That the most the Duke could crave was only six years and a half, because he had got allowance from the liferentrix of the sum of an year and a half's annualrent, upon the account of their forfaulture. *2do*, The said act of Parliament and act of Council following thereon cannot be respected, because it was but a private act; he was not called thereto, and therefore his interest by the act *salvo jure* was reserved. To thir it was DUPLIED, 1*mo*, The Duke craved but allowance for six years and a half. *2do*, He can never ALLEGE it was done *parte non citata*, because he was expressly called to the trial taken before the Council. *3tio*, The Lords cannot be judges for taking away an act of Parliament. TRIPLIED, His calling then imported nothing, because then he had not a right in his person, and so had no interest to oppose: yea, there was one of the Duke's creditors compeared and opposed, and he is expressly excepted out of the act, and is ordained to be paid of his haill annualrents.

The Lords, without respect to the act, reponed Sir Laurence to his defences; and appointed him, as if he were *in campo*, and as if the said act were never passed, to