the estate of Geight; there was thereafter a minute, betwixt him and his father and the Laird of Geight, whereby it was agreed that Pitrichie, who, and his predecessors, had an ancient wadset of the lands of Achincreive and others, being a part of the said barony, should have the reversion discharged by Geight; and that Geight should give him a new right of the said wadset-lands, irredeemable, and holden of the King; and should pay to Pitrichie, for the charges in obtaining and declaring of the said gift, 4000 merks: and that, on the other part, Pitrichie should dispone to Geight the rest of the estate, and the right he had thereto by the said recognition.

Thereafter Pitrichie, having intented declarator for nullity of the said minute, upon pretence that Geight did refuse and fail to perform his part, did obtain a decreet; and did enter into a bargain with the Earl of Aboyn, and did dispone to him a considerable part of the said estate, that, by his power and interest in the country, he might be maintained, and be able to enjoy the rest. But, before the granting of the said right to Aboyn, Geight had intented a reduction of the said decreet of nullity; upon that reason,—That the said decreet was given, in respect he had not the writs at that time in hand to produce, and to instruct that he was able to give a right of the said wadset-lands, to be holden of the King; and that they were now found upon search of the registers: so that he had not been *in mora*; and the not-production of the said writs ought not to be imputed to him, but to the confusion of the times; his writs being scattered, and his father having been long time a sufferer and prisoner, for serving the King.

The Lords found, That the said decreet, being in effect upon a certification for not production, and Geight condescending, and offering to instruct, that he had not been negligent, and the occasion and manner that the said writs were not in his hand; and how he had recovered the same; he ought to be reponed against the same: And that, by the reduction, before the granting of the right to Aboyn, it was *res litigiosa;* and Aboyn ought to be in no better case than Pitrichie.

Page 181.

1676. *July* 11. BISHOP of DUMBLAIN *against* KINLOCH of GILMERTOUN.

IN anno 1620, his Majesty's grandfather did annex the deanery of the chapel-royal to the bishopric of Dumblain; and did mortify thereto an annualrent of ten chalders of victual out of the lands of Markle and Traprane: By virtue of which right, the bishops of Dumblain have ever since possessed the said annualrent, until 1638, that the bishops were suppressed. And thereafter, Mr Alexander Henderson, and Mr Robert Blair being provided thereto, as his Majesty's chaplains, did continue in the possession of the same, till the bishops were restored in 1661; and since, the Bishop of Dumblain was in possession of the same. But Francis Kinloch, now heritor, though he had been in use of payment of eight chalders of victual, as a part of the said annuity, out of his lands, since he acquired a right to the same; being charged at the instance of the said Bishop, did suspend upon that reason, *viz.*—That the said annualrent was wadset by the Earl of Bothwel, in the year 1587, to Mr Thomas Craig, for 7000

merks; and John Murray, Earl of Annandale, having acquired the right of the said annualrent, and having resigned the same in favours of King James, to the effect it might be mortified, as said is; the King, by the said mortification, could give no other right than what flowed from the said persons his authors, which was redeemable, as said is: And, *de facto*, the said right was redeemed; in so far as the right of reversion of the said annualrent having come in the person of the Duke of Lennox, donatar to the forefaulture of the Earl of Bothwel, and from him to the Earl of Balcleugh, and from the late Earl of Balcleugh to Sir John Scot of Seatoun.——*Cætera desunt.*

Page 185.

1676. *November* 24. WILLIAM WEIR *against* The EARL of BRAMFORD.

HIS Majesty and the Parliament, having rescinded the forefaulture of the late Earl of Bramford, who had been forefaulted, the time of the troubles, for his loyalty; did so qualify the act of rescission and restitution, that, albeit he had daughters, who, by the law, would have been heirs of line; yet the estate was settled by the Parliament upon his grandchild, son to the Lord Forrester, who had married one of the daughters.

Mr William Weir, having right by assignation to a debt of 5000 merks, due by the Earl of Bramford to Patrick Ker, one of the grand-children of the said Earl; and a decreet being obtained for the said debt against Edward Ruthven, the Lord Forrester's son, as having succeeded in the said estate, and being *bonorum possessor*, and having right, as said is, to said estate, ought to be liable, *passivè*, to the burden; the Lords, by the said decreet, declared, that the estate should be liable: and thereupon, adjudication having followed, against the said Edward, of a part of the estate, and infeftment upon the same; the said Edward did intent reduction of the said adjudication upon that reason;—That the said decreet against Edward Ruthven, whereupon it proceeded, was extracted wrongously; and not conform to the minutes and interlocutor; which were in these terms,—That the estate should be liable to the debt; but not that the said Edward should be decerned to pay, as the decree bears: And that there could be no adjudication against the said Edward, who was not heir to the said Earl; but there ought to have been a decreet and adjudication against his heirs of line, being charged to enter heir.

Upon debate among the Lords, some were of the opinion, and did represent, that there could be no adjudication against the heirs of line, nor decreet *cognitionis causa;* seeing they could not be charged to enter heir in special to that estate; which, by the Act of Parliament, did not belong to them; but was settled upon the said Edward, as said is: And that the said decreet against Edward was disconform to the Lords' interlocutor; seeing it was not intended, by the said decreet, that the said Edward, or any other estate of his, should be liable to the said debt; it being expressly declared, in the said decreet, that he should be free of personal execution: And the said decreet was but in effect a decreet *cognitionis causa;* and therefore behoved to bear the decerniture foresaid, that he should be decerned to make payment; which was only *dicis causa*, to the ef-