1706. *February* 26. SIR ANDREW RAMSAY of ABBOTSHALL *against* MILLER in KIRKALDY, and OTHERS.

MILLER becoming caution to Sir Andrew in a bond of £400, due by Thomas Young, his miller, to him, and being charged thereon, suspends, that, by the 7th Act 1695, he is free, because not pursued within seven years. ANSWERED, —Sir Andrew was minor a part of this time. REPLIED,—In thir short prescriptions minority neither stops nor is interrupted, unless it be expressed in the Act. DUPLIED,—Minority is an exception in the common law, and takes always place, unless it be excluded, as it is not here; *et inest de jure*, except it be discharged.

The Lords, considering the statute was new, and this a neat precise point in law, they continued the decision of it till June next. *Vol. II. Page* 332.

1706. *February* 1 *and* 27. SIR JOHN HAY of ALDERSTON *against* the LADY CARDROSS and the EARL of BUCHAN.

February 1.—I REPORTED Sir John Hay of Alderston against the Lady Cardross and the Earl of Buchan. Sir Lewis Stewart of Kirkhill, *in anno* 1652, grants a bond to Mr John Stewart of Kettleston, his second son, for 12,000 merks of principal sum, and likewise for 3000 merks of yearly annuity during his lifetime. In 1670, Mr John assigns this bond to Sir George Mackenzie; and he raises a process against Sir William Stewart, as representing the granter, for payment: which being called in 1672, Sir William proponed improbation against the bond, as false, and insisted on the articles both direct and indirect. But, after a long trial, the Lords sustained the bond, assoilyied from the improbation, and decerned for payment. Sir George Mackenzie assigns this debt and decreet following thereon to Mr Thomas Hay, one of the Clerks of Session; and Sir John Hay, as executor to him, raises a new process against my Lady Cardross, as heir to Sir William, her brother, for payment:

For whom it was ALLEGED,—1*mo*, *Absolvitor quoad* the 3000 merks of current annuity, and the annualrents of the 12,000 merks; because, Sir William being donatar to Kettleston's liferent-escheat, these fall under the gift, whereon there is likewise a declarator obtained.

ANSWERED,—This ought to be repelled; because Kettleston was denuded of the debt by an assignation in favour of Sir George Mackenzie, duly intimated long before the gift and declarator, and that for an onerous cause anterior to the horning and rebellion; and so it could not fall under his liferent-escheat, nor belong to the donatar, but only to his assignee.

REPLIED,—That, though there be a *jus quæsitum fisco et domino regi* by the denunciation, yet such is the benignity of our law, and its favour to creditors, that, wherever they affect the subject of escheat goods, by a legal diligence of poinding and arrestment prior to the gift, though posterior to the rebellion, all our decisions have preferred the creditor so using diligence to the donatar: But where it is by a voluntary conveyance from the rebel himself, though for an anterior onerous cause, our law has not favoured these voluntary assignees, but, in a competition, preferred the donatar to them. And, by the 145th Act, Par-