ness, failing of heirs of his own body, provided the return of the monies to them, as the said Archbishop was not bound to serve inhibition: So it had been against reason and gratitude to have done the same; and he never being debtor for the money, but *ab initio*, the same being secured upon the foresaid wadset, it were against all law and conscience to make him liable for any more than what he could recover, he being a naked trustee.

The Lords, having examined witnesses, and taken the Archbishop's oath, who did all declare that the Archbishop was never debtor by bond, and that the monies were lent upon a wadset taken in name of the said Thomas, to whom properly the sum did belong; and that the Archbishop, being only obliged not to consent, was not thereby bound to serve inhibition;—did suspend the letters, and found,—That all he was obliged to do was to communicate the right he had to the back-bond, and return the money in so far as was not affected: and that the narrative of the bond, being a clear mistake, and conceived upon an intention that never took effect, all that could be required was, that the Laird of Kingask should be in as good condition as the Bishop should be himself, who should communicate his right, as said is. *Page 375.*

1673. *December* 17. WILLIAM HAMILTON of WISHAW *against* ANDREW LUNDIE.

IN a declarator, pursued by Hamilton of Wishaw, against Andrew Lundie, to hear and see him found liable for six or seven years' rents of the lands of Fordell, upon a discharge subscribed by him to the tenants, bearing a receipt of two years' duty; and therefore that the said Lundie, as tutor, did discharge the said tenants thereof, and of all preceding years since the death of Sir John Brown, with absolute warrandice: Likeas, it being referred to his oath what years he intromitted with, he did depone that all intromissions he had, he did profitably expend the same for the use of his pupil; which was an acknowledgment of his intromission with the whole years libelled.

It was ANSWERED, That the general discharge of all bygones, being subjoined to the particular receipt of two years only, could not infer actual intromission of all these years; and the most it could import was to secure the tenants upon the warrandice, in case they should be troubled. And, as to the oath and quality subjoined, it did not bear intromission with the whole years libelled.

The Lords did find, That the discharge did only import the receipt of two years' duty, and that the oath and deposition, being qualified as said is, did not import actual intromission of the whole years libelled; and, therefore, that the pursuer ought to prove otherwise, the defender's actual intromission with the duties of all years, preceding the two years contained in the discharge.

Page 378.

1673. *December* 18. WALTER CORBET of TOWCROSE *against* HUGH CORBET of HARDGRAY.

IN a reduction and suspension of a decreet, recovered at Towcrose's instance, against Hardgray, as executor nominated by Towcrose's mother, upon this rea-

son,—That the decreet was unjustly given for the sum of £800, upon the oath of the executor, to his mother; because an executor's oath cannot constitute a debt to exhaust the testament in prejudice of the nearest of kin, or legacies contained in the testament:—

It was ANSWERED, That one of the legatees and nearest of kin being the executor's own daughter, the father's deposition is a sufficient probation of a debt; seeing, in law, it cannot be presumed that a father would depone in prejudice of his own child; which differs the case where an executor hath not that relation to the legators or nearest of kin: so that it was sufficient that the daughter did give her oath of credulity, if she had not reason to believe what her father deponed was true.

The Lords, finding that this case might be of great importance,—before answer ordained the daughter to be examined, if she was informed, or did know the verity of the debt; and, if she denied the same, they would then consider if her oath of credulity were sufficient against her.

Page 379.

1673. *December* 18. MR JOHN GIBSON, Parson of OLD Hamstocks, *against* PATRICK HEPBURNE and OTHERS.

IN a pursuit, at the said Mr John's instance, as presented to the parsonage of Old Hamstocks, against the heritors of the parish, for reparation of his manse, conform to an account made after visitation, by ministers appointed by the bishop, extending to seven hundred pounds and odds:

It was ALLEGED by the heritors, that the pursuer, by his presentation, being parson, and having right to the whole teinds in the parish, which was a very considerable benefice, and exceeding the value of some bishoprics, could not crave the benefit of the Acts of Parliament anent reparation of manses, which was only competent to ministers who had modified stipends out of the tithes; whereas such parsons ought to be looked upon as titulars of great benefices, such as bishoprics or abbacies.

It was REPLIED, That, by all the several Acts of Parliament anent reparation of manses, all ministers serving the cure, without distinction, may have the benefit thereof; and parsonages and vicarages not being ecclesiastical dignities, which are accounted great benefices, they cannot be debarred upon that pretext.

The Lords did repel the defence, in respect of the reply; and found, that albeit patrons had no right to the tithes, but must present parsons and vicars to the whole benefice, yet that will not prejudge them of the benefit of the Act of Parliament, if either they want or have not sufficient manses.

Page 379.

1673. *December* 19. JOHN M'LURG *against* GORDON of KIRKONAL.

JOHN M'Lurg, being assignee to a bond granted by Kirkonal's father and elder