decmable upon payment of a thousand pound, made by the defender to the pursuer; whereupon he did grant a renunciation thereof, the said tenement of land, falling now to the pursuer by virtue of the tailyie, the tack ought to revive; seeing the renunciation thereof, in law ought to be interpreted in favours of the defender and his wife, who paid the sum contained in the redemption; considering, that now the pursuer hath succeeded as heir of the tailyie, and that the tack was only granted to him for security of the said sum, as being due by his sister, the only heir of the first marriage, who was then only fiar of the land: and, by contract of marriage made by her and her father, the same was disponed to the defender, as her portion, in contemplation whereof he did provide her to a jointure, and to the conquest during the marriage.

It was ANSWERED, That, by the renunciation, the tack was *funditus* taken away and extinguished; and the defender, who subscribed the same, and took burden for his wife, can never found any defence thereupon; the renunciation being simple, without any provision or condition, that, in case of succession by the tailyie, it should revive and become effectual.

The Lords having considered the renunciation, that it was not only simple, but likewise did bear an obligement to remove, did repel the defence founded thereupon; but did reserve to the defender any action competent to him, which could only be personal, for repayment of the thousand pounds, paid to the pursuer upon the redemption of the tack.

Page 479.

1675. *July* 7. TROTTER *against* CRAW.

BY contract of marriage betwixt ———— Craw, and Trotter, his wife; there being a special provision, that, in case there should be no children of the marriage, the half of five thousand merks, to which she was provided in liferent, should return to her and her heirs; her husband being dead, she did thereupon pursue his heir, for payment of the half of the foresaid sum.

It was ALLEGED, That the pursuit could not be sustained upon that provision, because it could only be interpreted to take effect in case she had died before her husband, without heirs of the marriage.

It was REPLIED, That the provision not being in these terms, but simply failing heirs of the marriage, the same being now dissolved, the pursuer ought to have the benefit thereof, being now an impossibility that there can be any heirs.

The Lords did sustain the pursuit, and repelled the defence, in respect of the conception of the return of the provision, which was simply failing of heirs: but, in respect that she was liferenter of the whole five thousand merks, whereof the half was only her tocher, they did decern the heir to be only liable in payment after her decease, to any should represent her, or to her assignees.

Page 480.

1675. *July* 9. CAPTAIN HAY *against* CROMBIE.

IN a competition betwixt the said parties, for preference,—it was ALLEGED for

Crombie, That he being infeft in annualrent, clad with possession; in so far as, after the term of payment, he had got security from the common debtor, stating the same in a principal sum, before Captain Hay, who had acquired possession upon his right.

It was ALLEGED, That, unless the annualrent had been paid upon a decreet against the tenants for poinding the ground, any bond, granted by the common debtor, could not make Crombie's right a public right by possession.

The Lords did prefer Crombie; and found that the debtor himself might pay an annualrent without a decreet; or give bond therefor, making up annualrent in principal sum, bearing annualrent; which will make the base right clad with possession, and so preferable to any posterior right.

Page 486.

1675. *July* 9. MR ROBERT BIRNIE and JAMES HAMILTOUN *against* WILLIAM LOCKHART of CARSTAIRS.

THE said Mr Robert and James Hamiltoun, as executors to Mr John Lindsay, minister at Carstairs, having pursued William Lockhart for the stipend due to the said Mr John for the crop 1672;—it was ALLEGED, That they could only have right to the half of that year's stipend; because the defunct died in March 1672; and, by the late Act of Parliament anent ministers' anns, it is provided, That, if the incumbent survive Whitsunday, his executors should have the half of that year's stipend, and the other half for the ann; so that he, having died before Whitsunday, the pursuer can only have right to half of the stipend for an ann; especially the Act of Parliament being made for that same year 1672, and is *declaratorie juris;* there never having been an Act of Parliament before, determining that case.

It was REPLIED, That, before that Act of Parliament, by the constant custom and practice of this kingdom, an incumbent dying after the 1st of January had right to the half of the stipend as minister, and his executors to the other half as ann; and the late Act of Parliament could be no ground, seeing it is posterior not only to the death of the last incumbent, but to the term of payment.

The Lords found, That the Act of Parliament could only have respect *ad futura sed non ad præterita,* and that the ancient custom and practick ought to regulate this case; and that the Act of Parliament was not *declaratorie juris antiqui,* but clear contrary; and indeed, the Estate of Bishops having brought in this act, it was carried contrary to the opinion of severals, and mine own, as being prejudicial to ministers' relicts and children.

Page 486.

1675. *July* 13. ACT of SEDERUNT anent Bills of Suspension and Liberation of Prisoners for Debt.

THERE being a bill reported to the Lords, by the Ordinary, bearing not only suspension, but a warrant to set at liberty a prisoner for debt, upon a reason of