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.*

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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HIS Majesty and the Parliament, having rescinded the forefaulture of the late Earl of Bramford, who had been forefaulted, the time of the troubles, for his loyalty; did so qualify the act of rescission and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-

fect execution might follow by adjudication: And, by the summons whereupon the decreet proceeded, it was only craved that the estate should be affected: And, by the adjudication, Bramford's estate was only affected; and the adjudger was content to declare that he should affect no other estate.

Yet some of the Lords were of the opinion, That the decreet not being in these terms,—That the Lords decerned, *cognitionis causa*, to the effect execution might follow against Bramford's estate,—it was *in arbitrio judicis*, to sustain the decreet to be a ground of adjudication or not: And that Mr William Weir, having been accessory to the appeals, at the instance of Callender, from the Lords of Session, deserved no favour. And it was carried by plurality, that the adjudication should be reduced.

Newtoun, *Reporter*. Mr John Hay, *Clerk*.

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1676. *December 5.* RUTHERFORD *against* WEDDEL.

The Lords, in a suspension at the instance of a bankrupt, who was prisoner, did allow him to come out without the habit; because it was represented, that the debt was, for the most part, not contracted by himself, but by his father: Albeit some of the Lords were of the opinion, that the Act of Sederunt bearing no distinction, and being made upon good consideration, and conform to the practice of all other nations, that bankrupts should be known, by a habit, to be persons that deserved no trust; and that others may be affrighted from contracting or undergoing debts which they are not able to pay: And that the pretence foresaid was frivolous; it not being presumable that a person would be heir, and become liable to debts that he had not contracted, unless there were effects and sufficiency of estate to pay the same: And, if such pretences should be allowed, the law would be altogether illusory.

Gosford, *Reporter*. Mr Thomas Hay, *Clerk*.

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1676. *December 22.* TAIT *against* WALKER.

THE children of a second marriage, having pursued the son of the first, for implement of their mother's contract of marriage, and the provisions therein contained in their favours:—

It was ALLEGED, That they were debtors themselves, in so far as they were executors named and confirmed to their father:

And it being REPLIED, That the testament was given up by the mother, they being infants for the time, and she was not their tutrix, and so could not bind them:—

The Lords found, That there was difficulty in the case; in respect the pursuers were now past 40 years, and they had never questioned or desired to be reponed against the said confirmation. And, on the other part, it was hard that a deed of their mother, having no authority to do the same as tutor or cu-