accresce to him during his rebellion; pursues a general declarator against Crightoun of Creichy. It is excepted by the defender, That all parties having interest are not called, viz. the king's treasurer and advocate; because nothing fell under the escheat but what was pertaining to the rebel the time of his denunciation, and a year thereafter; so what accresced thereafter to the rebel was at the king's disposal, by a new gift. It was answered, Ought to be repelled, in respect of the gift bearing as said is. The Lords repelled the exception.

Page 64.

1628. *November* 25. The LAIRD of PHILORTH *against* His CREDITORS.

THE Laird of Philorth, being detained in ward in the tolbooth of Aberdeen, by his creditors, seeks suspension and relaxation, and to be put to liberty, *super cautionem juratoriam*, for the reasons contained in his bill. The Lords granted suspension and relaxation, to the effect he might stand in judgment; but refused to put him to liberty, *super cautionem juratoriam*: neither use the Lords, upon caution, to put a man to liberty, but *super cessionem bonorum*.

Page 249.

1628. *November* 21 *and* 26. PATRICK BRUCE and WILLIAM WALLACE *against* ROBERT BRUCE.

IN ejections, it is sufficient to libel that the defender ejected was mailler, even to him that produced no right, so that he prove that he paid mails and duties to him before the ejection, *prout de jure*, or that he conditioned to pay mails and duties, before the ejection; which condition the Lords only sustained to be proven by writ.—21*st November* 1628.

In the said action, it was excepted by the said Mr Robert Bruce, That the said William Wallace, pursuer of the ejection, took a tack from Robert Bruce, son to the said Mr Robert, from Martinmas till Martinmas, and, after Martinmas, removed voluntarily, and took his haill goods and gear off the ground, and so Mr Robert did no wrong to enter to the void possession; for, otherwise, he behoved to let the lands ly lea, and would have wanted a year's duty. The Lords found this exception relevant, the first part thereof being proven *scripto vel juramento partis*, and the last part *prout de jure*, except the pursuer reply upon some violent deed committed in the ejection.—26*th November* 1628.

In the same case, it was alleged by Mr Robert, No repossession nor violent profits can be craved by the pursuer of the ejection; because he offered him to prove he lawfully warned the pursuer at Whitsunday 1625, and obtained decreet of removing against him, and orderly removed him. The Lords found that the defender was neither subject to repossess the pursuer, nor pay the profits of the room after the warning and decreet of removing following thereupon.—26*th November* 1628.

Page 68.