1666. *June* 6. EARL of CASSILLIS *against* SIR ANDREW AGNEW.

No 3.
Passing from a declarator against a feuar's right, found not to be inferred by acceptance of two years' feu-duties after the declarator.

THE Earl of Cassillis, as superior of some lands holden of him, by John Gardiner, obtained declarator of his liferent escheat, and that a gift of the said liferent, granted by the said Earl to the said John was null, in so far as it contained a clause irritant, That if John Gardiner should give any right of the lands to any of the name of Agnew, the gift should be null, *ipso facto*; whereupon in *anno* 1650, the Earl obtained declarator of the clause irritant, by John Gardiner's giving right to Sir Andrew Agnew, and now insists for the mails and duties since that declarator. It was *alleged*, that the said Earl had accepted the feu-duty of several years, since the said declarator, and thereby had tacitly past from the declarator, and could not seek both the feu-duty and also the whole mails and duties by the escheat. It was *answered* for the Earl, that having both rights in his person, he might poind the ground for the feu-duty, and his donatar might pursue for the mails and duties; 2*dly*, his acceptance of the feu-duty, albeit it could not consist with the mails and duties, yet it would only extend to those years that the feu-duty was accepted, and to no others.

THE LORDS found the acceptance of the feu-duty relevant only for those years for which it was received; but it occurred to some of the Lords, that if it were alleged there were three consecutive discharges of the feu-duty, that these, as they would presume all bygone feu-duty paid, so they would extend to the mails and duties for all years preceding the discharges; therefore the defender was ordained to condescend if so many discharges were, and that this point might be debated.

Fol. Dic. v. 1. *p.* 430. *Stair, v.* 1. *p.* 373.

No 4.
A superior obtained decree of improbation against his vassal, and received the feu-duty of that same year, by a discharge posterior to the decree. Found, that the decree needed not be reduced, as being thereby *simpliciter* past from.

1671. *June* 6. GEORGE STEEL *against* HAY of Ratray

GEORGE STEEL pursuing an ejection against Hay of Ratray, as heir to his father, who was infeft in some acres of the Halkhill of Ratray, and in possession; it being *alleged* that the pursuer's father's rights were all improven by a decreet in *anno* 1624, after which Ratray's author did enter to the possession, and continued therein since that time; likeas, he did obtain a decreet of removing against the tenant, which ought to defend him against an ejection, both these decreets being standing unreduced; it was *replied* for the pursuer, That the decreet of improbation was past from, in so far as it being obtained at the instance of the defender's author, as superior of the said lands, he did receive the feu-duty for a year subsequent to the decreet; and for the decreet of removing, it was only against the tenants, the pursuer not being called. THE LORDS did sustain the reply to take away the defence, albeit the