

To this it was ANSWERED,—That Harie having right to the sum by virtue of the clause of substitution in the bond, he behoved of all necessity to have right to all that had followed thereupon, since the bond, and the diligence done thereon keep the same channel, and cannot in law be divided, *ubi accessorium sequitur suum principale*; and Harie needed no other thing to give him right to the apprising, but the clause of substitution conceived in his favours: and the leading the apprising after the bond, and the Earl's taking the infestment to himself and his heirs whatsoever, must be repute, no change of the substitution, nor exercise of that power reserved him by the bond, but must be ruled by it as relative thereto; and to propone upon the Earl's right as heir, is not competent unless he were compearing.

It was REPLIED,—That Harie and those who have succeeded in his right, should have raised a declarator of their right to the apprising, as consequential to the bond, ere they could use any order of redemption by virtue thereof.

They were to have the Lords answer upon both these points. See a case not much unlike, *26th July, 1610, Douglas of Cavers contra Elliot.*

*Act. Lockhart. Alt. Wallace. Advocates' MS. No. 110, folio 86.*

1671. *January 27.*

MACKENZIE *against* MACKENZIE.

THIS is a reduction of a decret of the commission for plantation of kirks, at a minister's instance, against his parishioners. My Lord Advocate refused to find the Lords Judges competent to the reduction of the plats decreets, because it is a committee of Parliament, and at least co-ordinate to the Lords themselves. But it being called before my Lord Gosford, he SUSTAINED it, seeing the Lords are not obliged to decline themselves. (*Vide infra, June 1677, Number 586, Minister of Nig's case.*) And this were very acceptable to the lieges, if it were drawn in a custom, because they get far more speedy justice before the Lords of Session, than they do before that commission. See something not unlike sustained in the English time, *11th June 1656, Earl of Roxburgh.* Yet see *6th February 1658, Mr. Robert Hodge*; but at this time there was no such court as a commission.

*Act. Rory Mackenzie. Alt. Sir G. Mackenzie.*

*Advocates' MS. No. 111, folio 87.*

1671. *January 27.*

GEORGE GORDON *against* REIDS.

THIS was a reduction, at the instance of Mr. George Gordon, son to George Gordon, messenger, against thir Reids, of a disposition made by his father to them on death-bed. Against which it was ALLEGED,—That he had no interest to pursue this action, because he wanted an active title; *viz.* he was not served and retoured heir. ANSWERED,—He had a service, and that was enough. REPLIED, It was never heard of, that a service (which is only a passive title without a re-