tutor, had required the Earl of Marshall before her marriage to make payment, and by the marriage (the sum being made moveable) he had right thereto, *jure mariti*, so that albeit the right of the wadset could be reduced, yet it could not be to the prejudice of his right, which ought to be paid. It was *answered*, that reduction being a real action, the defence was not relevant to hinder the same, seeing they declared that the decreet reducing the wadset should be but prejudice of the husband's right to the sum, *jure mariti*. THE LORDS, notwithstanding did sustain the allegeance, but declared that it was *ex gratia*, and only of purpose to put an end to the pleas betwixt the parties, which had depended 30 years space. Thereafter the husband insisting upon the requisition and his *jus mariti*, it was *alleged* against the requisition, that it was null, in respect that the Earl of Marshall, being out of the country, he was required only at his dwelling house before a notary and witnesses, but not at the market-cross of Edinburgh, and pier and shore of Leith, whereat he was only charged by a mesenger by letters of supplement. THE LORDS did sustain the allegeance, and found that the Earl ought to have been required before a notary and witnesses at the market-cross of Edinburgh, pier and shore of Leith. But Leith *alleged* thereafter, that he offered to prove that he was lawfully required. THE LORDS did sustain the same, and assigned a day to that effect.

No 49.
burgh, and pier and shore of Leith, only.

Fol. Dic. v. 1. *p.* 261. *Gosford, MS. No* 170. *p.* 72.

*** The same case is reported by Stair, *voce* PRESCRIPTION.

1671. *June* 16. The LORD LOVAT *against* The LORD MACDONALD.

No 50.
Found in conformity with the above.

THE Lord Lovat having intented action against Macdonald, upon the act of Parliament anent debtor and creditor, for payment of the superplus of a wadset granted of a part of Lovat's lands, for the sum of 5000 merks, which they *alleged* were worth 2000 merks of yearly rent, and that since the year 1662, in respect that Macdonald was required, and instruments taken, to accept of security for payment of his annualrent; it was *alleged*, that the requisition was only at the defender's dwelling-house, he himself being out of the country, and that letters of supplement ought to have been raised, and intimation made upon 60 days. 2*do*, A simple requisition was not sufficient, and the defender could only be liable from the date of the summons raised thereupon, which was not until two years thereafter. It was *replied*, that the act of Parliament did not ordain requisitions to be made of that kind, but in respect of the exorbitancy of the wadset it was sufficient to require at the dwelling-house, and that thereupon summons being raised, *quocunque tempore*, the defender was liable for the superplus rents after the requisition. THE LORDS did not sustain

No 50. the requisition, the defender proving that he was out of the country, which being proven, they did find him only liable from the date of the citation before the Lords, but he failing to prove, or admitting to the pursuer's probation that he was in the country, they proving the same, they found him liable from the date of the requisition. But in respect the instrument of requisition was quarrelled upon that ground, that there was neither a procuratory given nor produced, the LORDS did ordain that the procuratory should be produced, and that the notary should declare that he knew the verity thereof, and that it was good and sufficient, as likewise that the security offered should be condescended on and produced, and found to be such as the wadsetter could not refuse, otherwise they declared that they would not sustain the requisition.

Fol. Dic. v. 1. *p.* 261. *Gosford, MS. No* 352. *p.* 170.

*** The same case is reported by Stair, *voce* REDEMPTION.

1687. *July.* SCHEILL *against* SCOT.

No 51.
A horning upon an act of adjournal of the court of justiciary, against a person out of the kingdom, need not be denounced at the pier and shore of Leith; but only at the market-cross of Edinburgh.

MR PATRICK SCHEILL, as donatar by the Marquis of Douglas to Thomas Ogilvie of Logie, his single and liferent escheat, having pursued a general and special declarator against Logie, and Mr Robert Scott, minister at Hamilton, for the rents of the lands of Logie, which are a part of the regality of Killimuir, whereof the marquis is superior, *alleged* for the defenders, That the horning upon which the gift proceeded was null, because the denunciation was only at the market-cross of Edinburgh, and not at the pier and shore of Leith, Logie being out of the country for the time; and albeit the horning should be sustained, yet Mr Robert Scott ought to be preferred to the rents of the lands, because Logie being formerly year and day at the horn, the marquis did grant a gift of his liferent escheat to the Lord Torphichen, who was a creditor of Logie's, so that his liferent escheat being once gifted to the Lord Torphichen, it cannot fall or be gifted to any other; for, whatever may be pretended in the case of a single escheat, it comprehends only the moveables belonging to the rebel the time of the gift, and within year and day thereafter; yet, it is not so in the case of a liferent escheat, which comprehends the rents of the lands during the rebel's lifetime; so as a man cannot have two lifetimes, so neither can there be two liferent escheats. *Answered*, That the denunciation of the horning, upon which the gift proceeded, being upon an act of adjournal of the justice court, it is sufficient that the denunciation be at the market-cross of Edinburgh, as it is declared by the 126th act, Parl. 12. James VI. And the first gift granted to the Lord Torphichen was to Logie's own behoof, and as equivalent as if it had been given to himself, and so became extinct; and he thereafter being year and day at the horn, his liferent escheat did again fall to the superior, and may be gifted to a second donatar. THE