way they rose, and by which they must stand; that Court judges sovereignly and without appeal, where the sum in dispute is within L.50 English; but if it exceed the same, it may be carried from them to the States General and their Council; as William Aglonby, in his Present State of Holland, p. 138, lib. 2, cap. 18, tells: so that it appears that Court is not everywhere incontrollably sovereign.

The Lords inclined to find, that if the Judge-Admiral commit iniquity, they may and will advocate from him: and though they were clear enough in it, yet out of respect to the said Court, they, without passing the advocation, ordained the cause to be debated upon the bill, which was a passing it upon the matter; as also found that he assumed too much power to grant commissions before answer to both parties for a mutual probation: both upon the account that court should be summary, and not delay strangers or seamen by such tedious interlocutors; as also, because, though the Lords themselves practised the same frequently *ex nobili officio*, it was not proper nor competent to others to venture upon it, especially W. Pringle, but that they should astrict themselves more to form. Which was a strain of vanity to appropriate that method of procedure to themselves. See the informations of this cause beside me.

Advocates' MS. No. 391, *folio*, 215.

1673. *June.* ROBERT FAW and LORD LINDSAY *against* FOTHERINGAME of Poury and LORD BALMERINO.

IN an action pursued by Robert Faw and my Lord Lindsay *contra* Poury Fotheringame and my Lord Balmerino, the following case fell to be debated, Whether or no bye-gone non-entry duties be due to the superior's executor, or to his heir, or any other singular successor standing infeft in the right of superiority. It was not questioned, if the superior had obtained a decreet of special declarator of non-entry in his own time, but then the same became moveable, and fell under his executry; but all the doubt was, where he died, the same being undeclared: in which case it was contended for my Lord Lindsay and his donatar Faw, that they transmitted to the heir and singular successor; because none could pursue the declarator but allenarly one who stood infeft in the superiority, and could give entry to the vassal, which did not quadrate to the executor; that the superior had no *jus perfecte quæsitum* to these obventions and casualties of superiority, before declarator; and, before that, they are *jus individuum*, and not seperable from the right of superiority itself, and so must be carried with it, aye till they be declared, before which time they cannot be properly said to be *in bonis defuncti Superioris.*

To which it was ANSWERED, that the superior, during the non-entry, was *loco proprietarii*, and the non-entry duties came in place of the mails and duties of the lands; and, therefore, as the mails and duties owing before the vassal's decease fall under his executry, so must thir non-entry duties fall under the superior's: and seeing it is not controverted but they are so conveyed after declarator, the analogy of law will dispose of them in the same manner before it; seeing a decreet of declarator alters not *jus debiti*, the nature of the debt, and it is as well due before as after, else it could not be declared in his favours: that the casualty of ward

(betwixt which and non-entry in this case there is no imaginable disparity) falls to the superior's executor; *ergo*, that thir duties would fall under his escheat; *ergo*, are moveable: that all annual prestations after the term is elapsed at which payment should be made are moveable; as bye-gone annual-rents, feu-duties, tack-duties, &c. and thir non-entry duties are of the same kind, *Ergo*—

See a very full and learned reply to this in the Informations beside me.

The Lords found these bye-gone duties, never being declared, belonged to the heir and singular successor: which many judged disonant to the analogy of law.

As for the instance brought from the casualty of ward, I was stumbled by a resolution I found marked by Hadington in his practiques at November, 1609, *No.* 31, in a debate betwixt the Earl of Argile and the Laird of Ardkinlas; where it was thought a gift of ward and marriage undeclared fell to the donatar's heir, and not to his executor. And Craig, page 68, speaking of the same question, is very unclear; only insinuates as if what was due in right of the ward before the superior's decease appertained to his executors, and the rest to his heir.

In this action of Lindsay's, there were other two things controverted; the first was, that Lindsay's seasine was null, because not registrate, neither in the general register, nor in the particular of that shire where the lands about whose non-entry they were disputing lay. ANSWERED, they were registrate in the particular register of Fyffe, within which these lands lay; at which, by a dispensation contained in his charter, seasine was ordained to be taken, and to stand sufficient for the whole. REPLIED, that dispensation gave no allowance for this way of registration.

The next point was, the pursuer being forced to restrict his summons to the retoured duty for all years and terms preceding the citation in his declarator; after that he craved the full mails and duties of the lands, and cited a decision in a case of Sir Jo. Harper's, where the Lords found it so. The defender alleged, that he could acclaim nothing but the retoured mail till he should obtain a decreet, after which indeed they confessed the full mails and duties would be due; and alleged a practique between the Earl of Argile and the Laird of M'Claud, wherein the Lords, that same very Session, had so determined it.—See them in the Informations.

Advocates' MS. No. 392, *folio* 216.

1673. *June.* Sundry BARONS, &c. *against* The LORD LYON.

ABOUT the same time, in June, 1673, I heard of a process some Barons and Gentlemen had intended against my Lord Lyon, to hear and see it found and declared that he had done wrong in refusing to give them forth their coats of arms with supporters, whereof they and their predecessors had been in possession past all memory, and never quarrelled till now; and, therefore, that he might be decerned to immatriculate them so in his register, and give them forth an extract; conform as is provided by the late act of Parliament in 1672. The Lyon's reason is, because, by an express letter of his Majesty's, none under the dignity of a Lord must use supporters. (He grants them now to some who were in possession of them of old.)