got relief of the cautionary; and having incapacitated the heirs of Sir Robert, or his creditors or legators, to pursue for their relief, and as he is now liable for the said three thousand merks, either to the creditors or legators, who shall be found to have best right:

The Lords did find Sir John liable for the said debt, upon this reason, That he was not able to assign the right of comprising and annualrents which he had purchased, without allowing to him the charges and expenses he had been at in purchasing the same: Which seemed hard, seeing the condition of his obligement was not fulfilled by Sir Robert himself; and there was a necessity for him to acquire these rights, and to seek his relief, the heir or creditors never having interposed or desired to satisfy the charges he had been at; so that, in reason, his just disbursements ought to have been deduced.

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1676. *January* 21. MR PATRICK HOME, Advocate, *against* The EARL of HOME.

IN a pursuit, at Mr Patrick Home's instance, against some of the tenants of Coldinghame, compearance being made for the Earl, who offered to defend upon a right to the lands,—it was ALLEGED for the pursuer, That he having transferred his title against the Earl, *passivè*, as heir to his brother, he could not be heard to defend the tenants, unless he had a title in his own person; in which case he was content to debate, seeing thereby he behoved to be heir.

It was REPLIED, That albeit the transferring was given against him as heir *passivè*, yet that did not hinder him to defend upon any other right, without being heir.

The Lords did repel the allegeance, and found that the transferring being only against the Earl *passivè*, it could not hinder him to defend upon any other right which he had acquired *singulari titulo*.

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1676. *January* 21. MRS HOME *against* The said MR PATRICK HOME.

THE said Mrs Home having given in a petition to the Lords for payment of a yearly annuity, which she was provided to by her father, the Lord Renton, as being her only aliment,—it was ANSWERED, That he could not be decerned upon a naked petition, but there ought to be an ordinary action raised, and he cited; and the same ought to proceed according to regulation, it being for a civil debt.

It was REPLIED, That he was a member of the College of Justice, being an advocate, and this being in effect an alimentary action, it ought to proceed summarily upon a bill.

It was DUPLIED, That the petition not being against him for any malversation in his calling, but being the ground of a civil action, he was in the common condition of all other lieges.

The Lords, notwithstanding, ordained him to make answer to the petition, as having in their power, upon great necessity and weighty considerations, to proceed summarily upon bills. Which seems hard, albeit the case was favourable.

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1676. *February* 3. THOMAS BULTIE *against* The EARL of AIRLY.

THE Earl of Airly's father being debtor to one Melvill of Pittachope, by two several bonds, this Earl did grant a bond of corroboration in favours of Melvill. The two principal bonds being assigned by Melvill to one Rollo, but not the bond of corroboration, Thomas Bultie, as having right to the assignation, did pursue this Earl of Airly for payment.

It was ALLEGED for the Earl, That there could be no process upon the bond of corroboration granted to Melvill, because it was not expressly assigned, but only the two principal bonds granted by his father; and the pursuer having no right thereto, Melvill might discharge the said Earl, having still the right in his person to that bond.

It was REPLIED, That the assignation did bear, not only a right to the two bonds, but a general clause, and to all that had followed thereupon; and the bond of corroboration being *accessorium, sequitur principale.*

The Lords did sustain the action, upon the assignation bearing that general clause; which they found to comprehend not only all legal diligence, but likewise all additional securities, unless they had been particularly reserved in the assignation; or that, before the assignation intimated, the Earl of Airly had obtained a discharge of his bond of corroboration, or had retired the same before it was cancelled; which they found relevant to be proven: otherwise they found him liable, and that he was *in tuto* to make payment to the pursuer.

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1676. *June* 9. ALEXANDER BURNET *against* WILLIAM GIBB.

IN a spuilyie of teinds, at Burnet's instance, as having right, by a tack from the Bishop of Aberdeen, to the teind sheaves of the lands within the parish of St Nicholas, whereof Footsmyre, belonging to the defender, was a part;—it was ALLEGED, The tack could give no right to the teinds, being of madder herbs and roots, whereof no teinds can be due; neither parsonage nor vicarage.

It was REPLIED, That the pursuer's author did take a tack of his whole lands, whereof this Footsmyre was a part, and so could not evite the same by inclosures, and making it a yard for herbs only; which is not lawful for heritors to do, in prejudice of titulars or tacksmen, who have been in possession.

The Lords found, that an heritor may take in his lands by inclosure, and neither sow the same with corn, nor put in bestial, which may yield vicarage teinds. Which was hard in general; seeing *decimæ* are *patrimonium ecclesiæ;* and heritors taking tacks cannot invert and frustrate the titulars altogether, unless they be liable for damage and abstraction; which might be of a general