1677. *June* 28. JOHN ANDERSON *against* WILLIAM ANDERSON.

No 6.
Found in conformity with the above.

IN an exhibition and delivery of evidents of several lands, which were comprised by Robert Anderson, at the instance of the said John, as heir of conquest, against William Anderson, it was *alleged* for the defender, That he being served heir of line to the said Robert, as being his immediate younger brother, he had the only right to the evidents of the said lands comprised, because the defunct, their brother, was never infeft upon his comprising.—It was *replied*, That notwithstanding there was no real right by infeftment, yet the comprising being a real diligence against the lands, whereupon infeftment may follow, the same did belong to the heir of conquest, and not to the heir of line.—— THE LORDS did repel the defence, in respect of the reply, being moved upon that consideration, that by a late pratique in a case of Falconer and Robertson, No 3. p. 5605. there being a bond granted for provision of a daughter, bearing a precept to infeft in an annualrent of the land, albeit no infeftment had followed during the father's lifetime, yet it did belong to the heir of conquest; but as it was my opinion in that case, that the subject being only an heritable bond for a provision to a daughter, whereupon no infeftment followed, so she dying, it ought to have fallen to the heir of line, for reasons therein set down; so for these same reasons there being nothing in the person of the defunct but a naked comprising, and no sasine nor charge against the superior, much might have been said for the heir of line in this cause. There was likewise a debate as to the lands in Holland, wherein their defunct brother died infeft, according to their consuetude, and so did fall by their law to all their brothers and sisters equally, if Anderson the elder brother had *jus primogeniturœ*, and might detain the whole principal evidents of that conquest?—— THE LORDS, after reasoning, did find, That, seeing by the law of Holland all successors who were *ejusdem gradus* did succeed alike, and the eldest brother had no election; so in this case there being three or four brothers and sisters, the eldest having but one interest, could not have the sole keeping of the whole evidents, but only a transumpt, such as might make faith in Holland; and the rest being the major part, should have the keeping thereof, upon security to make them furthcoming.

Fol. Dic. v. 1. *p.* 375. *Gosford, MS. p.* 666. *No* 986. & 987.

1706. *January* 23. BEGBIE *against* BEGBIE.

No 7.
Bonds secluding executors descend not to heirs of conquest, but to heirs of line.

MR ALEXANDER WEDDERBURN having granted a bond of 1000 merks to the deceased John Begbie, and his heirs (secluding executors) there falls in a competition betwixt the creditors of the immediate elder brother, who claims the sum as heir of conquest, and the younger brother, who alleges the same falls