

though the bond bears date five years ago, yet Cheyn had neither demanded annualrent, nor done diligence thereupon.

In consideration of these circumstances, the Lords, *ex officio*, ordained witnesses to be examined upon the reasons foresaid; and, if need be, that George Cheyn be examined *ex officio*, how he got this bond, when, and for what causes.

*Vol. II, Page 675.*

1679. *February 13.* MAXWELL *against* LINDSAY.

MAXWELL of Cowhill raiseth reduction of a decreet-arbitral, pronounced betwixt him and ———; as being *ultra vires compromissi*, and pronounced after the expiring of the submission.

The defender ALLEGED Absolvitor, Because the pursuer had ratified the decreet arbitral, and acknowledged himself debtor for 2000 merks decerned thereby; and, in corroboration thereof, had disposed land for the same.

The pursuer REPLIED, That he was under caption when he granted the said right; and there was no abatement granted to him, but he gave security for the whole sum decerned; neither did he ratify the decreet-arbitral, nor pass from all question against the same, but only, in corroboration thereof, granted security: and though he had made actual payment upon distress, it would import no homologation, nor would exclude him from reduction of the decreet and recovery of the money.

The Lords repelled the defence founded upon the security granted, in respect of the reply,—that the defender was under caption: which, though it would not reduce the deed as done by force, yet it did not import homologation, as in the case of voluntary payment without distress.

*Vol. II, Page 693.*

1679. *February 18.* LAIRD of WEDDERBURN *against* SIR ROBERT SINCLAIR.

JOHN Stuart, son to the Earl of Bothwell, having obtained a *commendam* of the abbacy of Coldingham; the Earl his father being forefault, and his posterity dishabilitated to bruike estate or dignity in Scotland, John's *commendam* fell by the dishabilitation; and the abbacy was erected in a temporal lordship, in favour of the Earl of Hume, who gave a tack to Wedderburn's predecessor for 3000 merks of grassum, of the teinds of Kello and Kimmergem, which were parts of the abbacy. But thereafter the King grants a re-habilitation to John Stuart, bearing to be upon commiseration that John was an infant the time of his father's crimes, and noways accessory thereto; which was in March 1621. Thereafter there are several contracts betwixt Henry Stuart, brother to John, for John's behoof, and John himself; whereby the Earl of Hume disposes all right he has to the abbacy in favour of John; and consents, that, in the subsequent Parliament, John's re-habilitation by the King should be ratified, and that he should procure an erection to himself of the abbacy: whereupon, in August 1621, there is an Act of Parliament ratifying the King's re-habilitation to John,