1697. *July* 16.
FULLERTON of that Ilk *alias* of Corsbie *against* BAILLIE of Adamton and Monkton.

No 3.
Wreck and Ware.

IN the debate between Fullarton of that Ilk, *alias* of Corsbie, against Baillie of Adamton and Monkton, to hear and see it found and declared, that he stands infeft in his lands erected into a barony, with the privilege of wreck and ware, and so has right to debar the defenders from gathering sea-tangle on his ground, it was *alleged*, wreck and ware was not in the dispositive part of his charter, but only in the clause of the *tenendas*; and so the *littus* being *inter res communes*, and the ware *nullius et primi occupantis*, they, having wreck and ware in their charters as well as he, had right to gather it on the shore, which was free to all lieges, like the use of the air and water. *Answered*, My land marches on the sea, and bounds the lowest ebb-tide, whereas you have no lands on the sea-side, and so can claim no interest by your charters, where that clause is adjected of course, and can signify nothing to those whose lands bound not on the sea-shore; and *esto* the wreck were *inter regalia*, I have a better right to it than you, in respect to the situation of my land; and that a barony being *nomen universitatis*, it needs not express every casualty in the dispositive-clause; and Sir John Skeen, *voce* WARE, tells of sundry old decisions in 1549, (See APPENDIX) where one infeft in ware was found to have right to debar other neighbours from gathering it to muck their lands with, or gather cockles, mussells, or other small fish. THE LORDS found whatever the King might say against this pursuer, yet he had right to debar the defenders from gathering sea-tangle, or other ware, so far as his ground fronts on the sea, but prejudice to the defenders' possession, if they were able to prove use and wont past memory of man; seeing the right to this might be prescribed as well as any other servitude.

Fountainhall, v. 1. *p.* 786

1713. *June* 25.
JOHN GIB of Castletoun *against* DAVID ROBERTSON of Touchie.

No 4.
Whether a gift of single, escheat, flowing from the Crown fell under the right of the Lord of the Regality, within which the party lived?

IN a declarator of single escheat, upon a gift flowing from the Crown, at the instance of John Gib against David Robertson,

Alleged for the defender, The gift in favours of the pursuer cannot carry right to the defender's single escheat, because he lives within the regality of Kinross, and Sir William Bruce's heirs have right into all escheats of persons within that regality, conform to a charter from the sovereign of the year 1685, whereby the lands of Kinross, a part of the church-regality in Aberdour, were disjoined from that regality, and erected with other lands in favours of Sir William Bruce and his heirs-male, in unam integram baroniam nuncu-

pand. Baroniam et regalitatem de Kinross, cum plenario jure, privilegio et jurisdictione liberæ regalitatis, liberæ capellæ, et cancellariæ, ac justiciariæ infra prædictas integras bondas regalitatis. And the said Sir William Bruce and his heirs-male are constituted hæreditarii balivi dictæ regalitatis, cum omnibus et singulis privilegiis, immunitatibus, casualitatibus, commoditatibus, proficuis et divoriis quibuscunque; et cum omnibus honoribus, dignitatibus, emolumentis et libertatibus quibuscunque, similiter et adeo libere in omnibus respectibus, ac ullus alius dominus regalitatis, infra dictum regnum nostrum Scotiæ utitur potitur et exercet, virtute suarum cartarum, jurium et infeofamentorum earundem legum et constitutionum hujus regni nostri uti et exercere poterint; cum eschetis vitalibus reditibus et forisfacturis omnium personarum quæ infra dictam regalitatem quæ sub prædictis criminibus eorumve aliquo caderint, aut rebelles denunciati, convicti aut forisfacti fuerint, aut alio quocunque modo caderint, intromittendi, levandi, assignandi, et insuper donandi, eademque cum omni jure quod nos ad eadem habuimus, habemus, vel pretendere poterimus, &c. No 4.

Replied, for the pursuer, *primo*, Sir William Bruce's charter doth not comprehend single escheats, because not expressly mentioned, and escheats being *inter regalia majora*, are not carried under general words, Stair, B. 2. Tit. 3. § 60. Now, that single escheats are not expressed, is obvious, seeing the words *cum eschetis vitalibus reditibus*, if they have any sense, can be understood only of liferent escheats by joining the word *vitalibus* to the preceding word *eschetis*. For single and liferent escheats are usually disponed thus, *cum eschetis tam vitalibus quam simplicibus*; and if there was any ambiguity in the clause it ought to be favourably interpreted for the crown, especially considering, that by the act of annexation, all ecclesiastical regalities were extinguished, and the power of jurisdiction by heritable Bailies, only reserved to be given by the sovereign. *Secundo*, *Esto* the charter comprehended single escheats, yet at the time of granting the gift to the pursuer, Sir William Bruce's right of disposing of escheats, was by his neglecting to take the oath of allegeance, void and vacated during his incapacity, in terms of the act of Parliament 1693.

Duplied for the defender, *primo*, The word *eschetis* ought unquestionably to be joined to the subsequent word *reditibus*, because liferent escheats, belonging naturally to Sir William as superior, whether the rebel's lands lie within his regality or not, needed not to have been particularly disponed; and, the lands being erected with all the privileges of a regality, the clause containing a disposition of escheats, must be understood so as to agree with the erection. *Secundo*, The act of Parliament requires only baillies, and not lords of regality, to qualify by taking the oath; therefore, Sir William Bruce, in whose favours the regality of Kinross was erected, with all the privileges competent to any lord of regality, could not, through his not qualifying, fall from his privilege of gitting escheats, which is compentent a lord of regality as such,

No 4. and not to bailies of regality, but by special grant from their lord: And, though Sir William be named in the charter only hereditable baillie of regality, yet having annexed to his heritable right all the priviliges competent to any lord of regality; his not qualifying according to law, could only deprive him of the exercise of jurisdiction *qua* baillie of the regality, such as holding of courts, the benefit of sentence-money, and other perquisites or dues of court, and could not cut him off from disposing of the casualty of escheats, which is no exercise of jurisdiction, but a part of his property that belongs to him, as to a lord of regality, though the rebel be judged, and his lands lie within another jurisdiction, June 26 1680, Young *contra* L. of Raploch, No 26. p. 3635. Mackenzie, Crim. part 2 tit. 11.

THE LORDS found, That Sir William Bruce had right to gift single escheats fallen within the regality of Kinross; and that by not taking the oaths, he did not lose that right. *See* ESCHEAT.

Forbes, p. 688.

No 5.

1714. *November* 25. BRUCE *against* Ld. RASHIEHILL and Others.

IT was found, That the sea-greens in carses, which in spring-tides are entirely overflown, are not *inter regalia*, and therefore need not be established as a separate fee, but they may belong to the neighbouring heritors, as part and pertinent of their lands.

Fol. Dic. vol. 2. *p.* 328. *Dalrymple. Bruce.*

*** This case is No 2. p. 9342. *voce* NOVODAMUS.

No 6.

1739. *December* 7. Duke of ARGYLE *against* Sir ALEXANDER MURRAY.

FOUND, that the benefit of mines, &c. granted by the act of Parliament 1592, is not to be restricted to freeholders, immediate vassals of the Crown, but extends to all proprietors of land within the realm, freeholders, though holding of subject superiors.

Kilkerran, p. 478.

*** Lord Kames reports this case:

BY a statute in Parl. 12. James VI. *anno* 1592, it is enacted, "That mines and metals, in so far as they are part of his Majesty's property annexed, or any other way, shall be dissolved, and to the effect the same may be set in feu; and that it shall be lawful to his Majesty and his successors to set in feu-farm to every Earl, Lord, Baron, and other freeholder within the realm, all and