No. 40. 1747, Dec. 3. MORISON of Craigleith *against* STEWARTS.

A DEBTOR of a minor in an heritable sum wanting to pay the money, premonished him, and offered a bill of suspension and to consign. The minor was willing to take the money and re-employ it, (the sum was L.1000) but then his administrator-in law was abroad and could not concur in discharging the former security, though they had found another debtor to take it. The Lords would not appoint a curator *ad hunc effectum*, but thought they could themselves authorize the minor to discharge, but before they would do so, they remitted to the Ordinary to enquire into the sufficiency of the new security offered, and to report.

No. 41. 1748, Jan. 6. CAVERS DOUGLAS'S CASE.

FIND the claimant lawfully possessed of the office of Sheriffship and entitled to a recompense in the terms of the late act, but find that in respect of the private act in 1633 in his favours he can claim no more than L.20,000 in recompense.

No. 42. 1748, Jan. 7. EARL OF MORTON'S CASE AS TO LANGTON.

THE branch of his claims now under consideration was for the regality of Langton, which had been part of the regality of Morton, but was conveyed away in 1666 *cum privilegio regalitatis*, upon which charters were granted by the Crown, and has been since purchased by Lord Morton. The Lords found, that by the alienation and the Crown charters it was dissolved from the regality, and that the *privilegium regalitatis* could not pass with it, and though it now was again purchased the regality did not revive.

No. 43. 1748, Jan. 12. CLAIMS OF D. OF DOUGLAS, E. OF SUTHERLAND, &c.

Two very general questions were before the Christmas vacation argued at the Bar very fully because many of the claims depended on them; viz. 1st, As to regalities evicted or heritable Sheriffships granted since the acts of James II. 1455, Whether ratifications in Parliament were sufficient to sustain them? or 2dly, If the positive prescription would make them valid? and informations being by order given in were this day reported by Arniston as last week's President, and after long and full reasoning (but with a thin Bench) we sustained all such regalities as had been ratified in Parliament, and sustained the positive prescription as to both, but gave no judgment on ratifications of Sheriffships, the Bar not seeming to insist upon it, (at least not at the pleading) though I believe our opinion would have been the same as to them if it had been insisted for. Against the first part of the interlocutor were Arniston, Tinwald, (then in the chair) Monzie, and Murkle. For it were Minto, Drummore, Haining, Strichen, Shewalton, and I. Dun and Kilkerran (who were all that we could expect present) were indisposed. My reason in short was, that the question neither was nor could be of the power of the Parliament but of their intention. That at first we would not judge of reductions at the instance even of third parties after ratifications in Parliament, as appears by our reference to Parliament 16th December 1561, betwixt Earl of Caithness and Earl of Huntly, in our sederunt-book,

and others, that gave rise to act 18th 1567,—that from that time it was their declared meaning in the acts *salvo*, that by these acts they did not hurt third parties unheard. Notwithstanding of which where by the tenor of the acts, the contrary appeared, we never would judge contrary to them, witness 10th December 1622, Earl of Rothes against Gordon, and other cases therein quoted. And as to the Crown, King James II.'s act had provided a special remedy, and which was carefully followed in all after annexations, least the Parliament should be led in to ratify alienations of annexed property without knowing it was annexed. But still, if the Parliament with their eyes open should ratify such alienations and dispense with that law, it would be no objection that it was only a ratification; otherwise the presumption was, that the Parliament did not mean to annalzie annexed property; that such was the meaning of the annexations both by James II. and subsequent Kings, appeared by our act of sederunt 14th March 1594, afterwards made an act of Parliament 247. 1597, and the exception contained in it, by which it is plain that the doctrine since adopted by some lawyers that a previous dissolution was essentially necessary was not then true. But in the ratifying erections of regality the Parliament could not be misled, for though they might not know that lands in a ratification had before been annexed to the Crown under the general name of some earldom, lordship, or barony of different name, yet they behoved to know that the erection of a regality was what could not be done without their consent; and therefore, as there could be no question of the power of King and Parliament, I thought in that case there could be none of their intention. Besides, I did not think the Parliament meant those ratifications to have no effect, and I could not dispute the Parliament's power to give them all the effect they intended. We seemed to agree that the claimants were mistaken as to the Lords of articles, and that they were not always chosen by the Parliament, often before it. But how the private acts were passed in ancient times we could not know,—probably they must have first passed the articles where the Parliament sat but one day. *Vide* my Notes on the back of Mr Murray of Philiphaugh's claim as to the point of the positive prescription,—we were unanimous.

No. 44. 1748, Jan. 21. EARL OF MORTON'S CLAIM OF JUSTICIARY OF ORKNEY.

ON advising memorials *hinc inde* we found him entitled to a Justiciary, but only subordinate to the High Court of Justiciary, and therefore not entitled to any separate recompense.

⁂ There likewise appears in the manuscript the following note relative to Earl of Morton's claim of the regality of Aberdour, under date 16th January 1748.

THIS had formerly been part of Dalkeith, but having sold Dalkeith to the King, it was by the contract declared that it should not prejudge his regality as to his other lands, and Aberdour declared the head burgh. He claimed this jurisdiction over many lands lying in different counties, even as far I believe as Kirkcudbright, which were all in his charters, though he could not even say that the proprietors of these lands had ever owned him as their superior. He produced documents of possession by holding some few Courts at