Aberdour, but showed no possession as to those lands lying in other jurisdictions. As to such of them as are now come to hold of the King, there could be no question that they were thereby dismembered from the regality. The only question was as to any of them that might be found yet to hold of him, and some of us thought, (particularly Dun,) that exercising this jurisdiction over a part of the regality preserved it as to the whole. But both Arniston and I thought it did not, and that these vassals had acquired an immunity by prescription, unless in their charters their lands were designed as lying in that regality. We therefore found him entitled to a regality, but before answer as to the extent ordained him to shew the vassal's rights in the records or otherwise, and what was the tenor of them.

No. 45. 1748, Jan. 26. LORDS OF REGALITY AND BISHOPS, *Claimants*.

THESE were claims of heritable Bailiaries of regalities, some of them Bishops regalities and others lay regalities.

Upon Arniston's motion this day was appointed for hearing counsel, Whether a Lord of regality could create an heritable Bailiary? and 2dly, Whether in particular a Bishop who himself has his office for life can with his chapter create an heritable Bailie, or if that is not a dilapidation; and we gave both points for the claimants, *renit. multum* Arniston, *et* Tinwald. My reasons in short were, first, The universal custom; 2dly, They had the same power to do so that a Baron had to create an heritable Bailie, and that he did in all cases where he feued land *cum curiis et bloodwittis*, for it was only as his Bailies they could judge; 3dly, M'Kenzie, Tit. JURISDICTION OF REGALITIES, supposes it; 4thly, In all the decisions of this Court ancient and modern, that was taken for granted, even where a contrary judgment would have determined the question, witness the decision 1713, betwixt Duke of Montrose and Arncaple, touching Arncaple's claim to the heritable Bailiary of the regality of Lennox; and a decision about 1610, about a gift of escheat by an heritable Bailie of regality of St Andrews, betwixt Earl of Winton the heritable Bailie, &c. and many others; 5thly, The act of annexation 1587 and other acts that supposed these heritable Bailiaries to have been lawful grants. As to the second, besides some of the former arguments, that applied also here, I doubted if this was in our law a dilapidation, or that Bishops were upon the footing either of our liferenters or heirs of entail: That the Bishops must act by a Bailie, and I thought his commission ought to be a liferent one, and all the dilapidation by making it heritable was, that the next Bishop had not the choice of a new Bailie on the death of a former one: That with us nothing was accounted dilapidation but what diminished the rental: That the Bishop was *plenus dominus*, and with his chapter could do every thing that another proprietor could, where the law did not restrain him, and that was only not to diminish his rental, and therefore could feu out his property lands if it was without diminution of his rental, and it was no dilapidation that his successors had not the choice of new tenants or new entries, and therefore no more was an heritable Bailiary a dilapidation; and this confirmed by 29th act 1690, which expressly mentions heritable offices held of Prelates.