No. 27. 1748, July 13. OLIPHANT of Bachilton *against* SMITH of Methven.

THE Lords found that we could not approve of a valuation by a sub-commission of a commission appointed by the Parliament 1641, because of the act rescissory 15th 1661, notwithstanding the *salvo* in that act, and in the 61st act 1661.—13th July.

The Lords having 13th July last refused to approve of the valuation of a sub-commission, they the same day, on report of Kilkerran, found Oliphant liable for 40 years bygone teinds, and found the rent proven, notwithstanding the Minister's discharges acknowledging payment of certain sums and victual as proportion of teind, which we thought very different from the case of Denny, whose receipts bore in full payment of teinds; and here there was a decreet of locality in 1650 recorded in our books in 1732; and this day we adhered as to repelling the defence on those discharges; but, as to the extent of the rent, found so far as the pursuer had proved the rent that must be the rule, but where he had not proved for any of the years, that for these years the old valuation in the sub-commission 1613 must be the rule, *renit.* Kilkerran, Tinwald, *et me*, 8th November. 6th December Adhered. 6th July 1749, Find the rent not proved before 1731, therefore the old valuation must be the rule till that time.

No. 28. 1749, Feb. 15. SIR WILLIAM DALRYMPLE *against* EARL OF ROSEBERRY.

WE refused to receive a petition complaining of an interlocutor pronounced by us in January 1743, because of the long delay in reclaiming, though we had no express act in this Court.

No. 29. 1749, Nov. 8. OLIPHANT of Bachilton *against* SMITH of Methven.

See Note of No. 27, *supra.*

No. 29.* 1750, Jan. 17. SIR ROBERT GORDON *against* DUNBAR.

IN localling a stipend, a proof being adduced of the value of drawn teinds, the patron, Mr Dunbar, allocated the whole proven value. Sir Robert insisted he behoved to have deduction of a fifth as the King's ease. Answered: That is only in the case of the valuation and sale of teinds, but not in a locality. We unanimously found him entitled to the King's ease. Lord Duffus, author by progress to Mr Dunbar, *anno* 1697, sold to Sir Robert Gordon, the teinds of part of his lands for payment of 2d to the Minister in full of stipend in all time coming, with absolute warrandice, and obliged him to cause the Minister ratify, and gives himself absolute warrandice. Mr Dunbar laid a part of the stipend on these lands proportionally with his own lands. Sir Robert objected that he could lay none because of his disposition. Answered: The disposition is no better than a decreet of sale, which gives indeed an heritable right, and therefore liable equally with the patrons; 2dly, The warrandice only personal, not good against singular successors; 3dly, No infeftment on the disposition, and therefore not good against him. The Lords repelled the objection, chiefly on the two first grounds; but some of them doubted of the third, notwithstanding a decision I quoted 26th June 1745, Minister of Morbottle and Moir of Otterburn, (No. 23,) where we found that a personal disposition of teinds, not being of a patronage or a tack, was not even a title of prescription.