REDUCTION.

No. 1. 1735, Dec. 9. MAXWELL of Dalswinton *against* MAXWELL.

THE Lords found the adjudication on a charge to enter heir by itself a good title in a reduction of land rights, without proving that the person to whom he was charged to enter, was himself infeft,—and I think rightly, but I was this week in the Outer-House.

REGALIA.

No. 1. 1740, Feb. 5. THE DUKE OF ARGYLE *against* SIR ALEXANDER MURRAY, THE DUKE OF NORFOLK, &c.

THE Lords found that the words "other freeholders" in the act 1592, anent mines and minerals, ought not to be restricted to freeholders holding of the Crown, but comprehends all heritors of whomsoever they hold, *renit.* President, Justice-Clerk, Monzie, Leven, 7th December 1739. 5th February 1740, The Lords adhered.

No. 2. 1739, June 5, 14. SIR JOHN HUME *against* THE ADMIRAL-DEPUTE.

THE question was, Whether whales were *inter regalia* or if they fell under the grant of wreck? The Ordinary found them *inter regalia*, and we were of the same opinion; but Arniston did not like that expression, and therefore we made our interlocutor, that whales do not fall under the gift of wreck, and therefore adhere to the Ordinary's interlocuton, which is in effect the same thing. Arniston and Royston thought they fell under wreck. They owned they had always believed they were *inter regalia* till this process, but now they found no sufficient foundation for that opinion, and therefore they now thought they fell under wreck. 14th, The Lords refused a reclaiming bill without answers, and adhered.

No. 3. 1750, Jan. 11. THE EARL OF HOPETON *against* THE OFFICERS OF STATE.

THE Earl having applied to the Crown for a feu of all mines and minerals, of gold, silver, &c. of any of his lands not contained in his former gifts, in terms of the unprinted act 1592, his petition was by the Lords of Treasury remitted to the Barons of Exchequer to report their opinion; who reported that it was lawful for his Majesty to make such a grant, and that he had always been in use to give such grants to his sub-

jects in Scotland. The Earl petitioned them to vary the terms of the report, for that as early as 1718, on the reference of a like petition, the Court, after taking the opinion of the King's Advocate, and after conference with the Court of Session, reported their opinion, that by the act a *right* was communicated to the subjects to obtain from his Majesty such grants of working mines in their own lands, and that all the reports since were uniformly in these terms. But the Court would not vary the terms of their report; and the Earl apprehending that the report, that it was lawful for his Majesty, might sometime or other be constructed to import that his Majesty might also refuse that grant, raised a declarator of his right in the Court of Session, that a right was communicated to him to obtain such grant, and that the Crown could not lawfully give it to another, or work the mines for the Crown's use, and called the Officers of State. Lord Advocate admitted the Earl's right on the act of Parliament, but said that the process was unnecessary and incompetent, unless the Earl would subsume that the grant was refused him; and that there can be no process where neither any wrong is done, nor any right withholden or refused. But the Court thought, though this was generally a good rule in petitory actions, yet not in declarators of right, for a man may declare his property though no body challenge it, or disturb him; and many such declarators of right are in our law; therefore they unanimously repelled the defence, and decerned and declared in terms of the libel, *me referente.*

*** Reference is made, *voce* KING, to this title, for a note relative to the case, Murray against Creditors of Burnet.

It is mentioned at the end of the Note, No. 46, *voce* ADJUDICATION, that on 18th July 1754 the interlocutor was adhered to. The Note of that date is the last which Lord Elchies ever wrote, and is as follows:—

A reclaiming petition against our interlocutor of 16th November last in this cause was presented by the Lord President, then Mr Robert Craigie, wherein he gave up the argument formerly insisted in, that the Crown is entitled to the same preference on lands as on goods and chattels, as inconsistent with the 7th section of the act 6th *Annæ*, and insisted that by the law of England, where the King and a common person concur, the title of the King shall be preferred,—and that law was by the 18th article of the Union transferred to the customs and excise of Scotland,—and that though the act 6th *Annæ* took away the preference of the Crown on land for their debts, or rather the real lien that they had by the act of Henry VIII. yet it did not take away the prerogative. 2dly, That by another privilege the Crown cannot be joint tenant with any one, (which to me seemed to be the same thing in other words) and that neither was that taken away, and therefore the Crown cannot be preferred *pari passu*, but must be preferred simply. The Court, out of regard to the importance of the question, as well as to the drawer of the petition, ordered it to be answered; and when it came in the roll to be advised, the pursuer moved for a hearing in presence; and accordingly it was argued at the Bar for several days, and I have marked on a paper apart some of the principal observations on either side. The Lord Advocate I did not quite understand. He insisted that the King having the first adjudication, should be preferred to the posterior

adjudgers, though within year and day;—that if he was not the first, then indeed the subject having got the first judgment would exclude the King's prerogative by the act of Henry VIII.;—but then the Crown *jure communi* would be preferred *pari passu*,—which was giving up the topics in the petition; and if the Crown's adjudication was without year and day of the first, then he would be quite excluded. At advising, the pursuer insisted on the topics in the petition,—as to which I gave my opinion that the King's prerogative as to all debts due to him, could not be called a law concerning the regulation of trade customs and excise, and therefore not extended to Scotland by the 18th article of Union, and had it been so understood, could not have escaped the observation of our Parliament 1707, or passed without opposition, which yet by the minutes of the Parliament it appears that it did; and therefore the act 6th *Annæ*, instead of being correctory of the articles, was a split new law; that the King's preference for all his debts in England was the prerogative of the Crown, as well as that he could not be a joint tenant, and was gradually minced down from being much more grievous by sundry acts till that of Henry VIII.; but that prerogative of the Crown, though preserved as to goods and chattels, was declared not to take place as to our land rights, so far as inconsistent with the laws of Scotland; and as it was now admitted that the Crown's debt could not affect our land rights otherwise than by adjudication in this Court or voluntary infeftment, that adjudication or infeftment cannot affect them further than they ought to be liable by the laws of Scotland, and the laws of Scotland are declared to be the rule of judging, and the general laws have been sometimes held not to take away the right or privilege of the Crown, yet it cannot be maintained that those rights and privileges are directly the object of those laws; and I see no reason why the words of that clause should not take away that privilege (or rather prevent its extending to land estates in Scotland) as well as the privilege of a preference or real lien from the date of the contracting the debt, where it is a bond or contract, or other security, or from the suit in matters of accounts. 2dly, By the arguments at the Bar, though the King could not be a joint tenant, *i. e.* where lands are by one deed disponed to the King and a subject jointly, yet he may be a tenant in common by different deeds; and the Lord Advocate admitted that if there was an adjudication before his, he might be preferred *pari passu*,—and if he had adjudged from Burnet an adjudication that he had of another person's preferable only *pari passu* with other creditors, he could on that adjudication have no other preference than Burnet. Justice-Clerk spoke next, sometimes for the creditors, and sometimes consented to the President's reasoning, and at last would not vote; neither did Leven, because he did not hear the pleading. But all the rest except the President voted adhere.

REGISTER.

No. 1. 1734, Nov. 15. HUGH SOMMERVELL, *Supplicant.*

THE Lords found the party not obliged to give a receipt, nor the clerk answerable for the principal; but ordained the clerks to mark on the back of the copy left, or the margin of the minute-book, the persons name to whom the principal writ is returned.