No. 5. 1743, Jan. 5. ANDREW SPREULL *against* SPREULL CRAWFORD.

THOUGH in this case the defender was found accountable as representing his father as trustee, from circumstances, yet because he did not know the trust, and the Court not unanimous either as to the trust, we sustained his defence of *bona fides* against repetition till the interlocutor finding the trust, but that notwithstanding so far as he was creditor, he must impute in payment of his debts. We gave the like judgment as had been given some years ago in Sir James Cunningham's case, where the conveyance to the trustee bore in general certain sums of money, and no evidence offered that the sum was truly paid,—that an ease is presumed, and that it ought to be rated at a medium of the proved eases of other debts. 17th February adhered, principally on account of the transaction 1717; *multum renitentibus* President, Drummore, *et me.*

No. 6. 1744, Feb. 24. ANTONIUS LESLY *against* LESLY of Pitcaple.

FOUND that Count Charles is bound to denude.—*Renit.* Strichen, and Arniston, Reporter. *2dly*, Found that he is not bound to denude in favour of Leopold, his eldest son,—unanimously. *4thly*, That he must denude not in favour of Count Antonius his second son, but in favour of Mr Lessly of Pitcaple.—Justice-Clerk, Royston, and Haining were absent; and Kilkerran, Balmerino, and Murkle, were *non liquet*; but all the rest were unanimous. But this was reversed in Parliament, and judgment given in favour of Count Antonius.—18th February 1741.

In the case mentioned *supra*, 18th February 1741, the House of Lords having reversed our decree, and given judgment in favour of Antonius Count Lessly, a question arose about rents uplifted by Pitcaple, in consequence of our decree before it was reversed. The case was, that immediately after our decree, writs of appeal were served in name of Charles Cajuchan, Count Lesly, and Count Leopold, his son, but they neglected to take out a writ in name of Count Antonius, and afterwards for that defect they were allowed to withdraw these writs, whereby nothing was done that Session. Both parties had given factories to Tillifour for uplifting the rents, and he accordingly, after our decree, counted for the rents 1740 to Pitcaple. In December 1741, writs of appeal for all the three were served against Pitcaple, but not against Tillifour, who was no party. In March 1742, Tillifour paid Pitcaple L.110 sterling more of rents, and in April 1742, the decree was reversed, and the Lords sustained Pitcaple's defence of *fructus bona fide consumpti* as to all preceding the appeal in December 1741, but repelled as to after payment, and sustained Tillifour's defence, "lawfully paid." I indeed differed as to the first point, but I was alone. 24th February Adhered as to all that Pitcaple received before the appeal; and 13th February 1745 Adhered as to the whole.—(15th February 1744.)

No. 7. 1751, July 3. CHRISTIAN BEGG *against* MR THOMAS RIGG.

IN 1718, Mr Rigg purchased from Enterkine lands, that had been feued out by the family of Loudon *cum decimis inclusis*. It appears that some stipend had been allocated on them about a century ago, but no evidence that any stipend had been paid but once in 1700; and in 1702 Enterkine obtained decreet in absence of repetition against the Minis-

ter, and he in 1703 raised reduction of that decreet, but went no further, and no more stipends were demanded till 1740; that that Minister's relict sued Mr Rigg for the stipends from 1718 till the Minister's death in 1738;—and Drummore found him liable. But we in respect of his infeftment *cum decimis inclusis*, and that no demand had been made from 1703 till 1740, sustained his defence of *bona fide* possession. 3d July We altered and repelled the *bona fides*, and found Mr Rigg liable, unanimous except Justice-Clerk,—because the defender's charters though *cum decimis inclusis* contained a *reddendo* for the tithes, and an obligement to relieve of the King's annuity, and the Minister had two hornings in 1688 and 1695, and there was some evidence of possession before 1700. —(5th February.)

BURGH OF BARONY.

No. 1. 1734, Dec, 7. EARL WIGTON *against* BAILIES of KIRKINTILLOCH.

THE Lords found the jurisdiction of the Bailies of the Town not exclusive of the jurisdiction of the ordinary Court of the Barony held by other Bailies appointed by the Baron.

The Lords adhered. My reason was, that the Bailiary was to the Baron's own head burgh, where he should hold his Courts and have his prison, and consequently his Baron Bailie must have jurisdiction there. I instanced the case of Sheriffs and Magistrates of Edinburgh, and in that point there is no difference betwixt jurisdictions given by the King and given by the subjects, as appears by the decision Lord Colvill against Town of Culross in 1666. * I also instanced the case of the Canongate, where the Town-Council chose their own Bailies, and the Regality and Baron Bailie sat jointly with them in all causes concerning the inhabitants of the Burgh.

BURGH ROYAL.

No. 2. 1735, Feb. 7. LATE MAGISTRATES of STIRLING *against* PRESENT.

THE Lords adhered, in respect the pursuers were Magistrates and Councillors at the time of the election.

No. 3. 1735, June 13. CARNEGY, &c. *against* BAILIES of FORFAR.

THE Lords appointed them to be summoned to answer. The reason was, that they were the King's Bailies and should refuse no man, and the President said they must answer summarily.

* DICT. No. 6. p. 7296.