November 1770, the date of the Ordinary's interlocutor. But, on a second reclaiming petition, and answers, they gave them from the 10th May 1770, the date of citation in the summons of wakening.

This interlocutor was acquiesced in.

Several other decisions, at *Spottiswood's* instance against *Craick of Arbigland, Turner of Ardwall and Others*, were cited in this case, in which it had been found that maills and duties were due in the special declarator, from the citation.

SPOTTISWOOD *against* BURNET of CRAIGEND.

THE strongest of all these cases was betwixt Spottiswood and Burnet of Craigend. It was attended with several favourable circumstances; in so much, that, although the Lord Alemoor, Ordinary, 10th December 1761, found Spottiswood entitled to the superiority of Craigend, and that the lands were in non-entry, yet, on a reclaiming petition, and answers, the Lords, 14th July 1763, altered, and found, That Mr Burnet was entitled to hold his lands of Craigend of the Crown, and therefore assoilyied; and to this they again adhered 3d December thereafter.

But, on an appeal, the decree was reversed 22d March 1763; and a clause, as to the non-entry, was added in these words:—" But so as not to affect the respondent with any penalties on account of such non-entries, except from the commencement of the present action."

1772. *March* . BRODIE of BRODIE *against* SIR JOHN SINCLAIR.

THE superiority of the lands of Wester Brimms, in the county of Caithness, was acquired *anno* 1741, by the Lord Lyon, Brodie, who, upon his death, was succeeded by his son Alexander, both in his tailyied and unentailyied estate. On Alexander's death his succession divided: His entailed estate went to Brodie, now of Brodie, his heir male, and his unentailed estate to his sister, Mrs M'Leod, his heir of line. Of this last the superiority of Brimms was a part. But Mrs M'Leod renounced the succession; by which means the late Earl of Caithness, who had succeeded to the property of Brimms by decease of Lord Murkle, could not obtain an entry,—and neither could his superior, Sir John Sinclair, who succeeded to the Earl in virtue of a tailyie by his Lordship.

Sir John, having been advised to follow out the method prescribed by the Act 1474, raised a special charge, which he caused execute against both Mrs M'Leod and Brodie, to obtain themselves infeft as heirs in special to Alexander Brodie of Brodie, Lord Lyon, whereof one or other of them was in the right of apparency of the said superiority. And that, to the effect that they might be in a capacity to enter him as heir of tailyie in the property thereof, with certification of losing the superiority and whole casualties thereof during life; and

that it should be lawful to Sir John to take his entry from the Crown. This charge being contemned, Sir John brought a declarator of tinsel of the superiority, in terms of his charge, and obtained decreet in absence, 18th July 1771.

Of this decreet, Brodie raised a reduction, and concluded, that Sir John ought still to be obliged to take an entry from him, when his titles to the superiority of Brimms should be completed.

In defence, Sir John pleaded, that the pursuer had no title to insist in the action, and that he condescended on no relevant reason of reduction.

The first was clear: the pursuer was heir of tailyie in the tailyied estate of Brodie, but this superiority belonged to the heir of line; and no more belonged to the pursuer, than to any other man in Britain.

As to the second, his reasons of reduction were irrelevant: One was, That the special charge by Sir John, was to make up titles to the Lord Lyon, whereas the person last infeft in the superiority was his son Alexander. ANSWERED,—This was of no importance: the Act 1474 mentioned a charge, but any notice was sufficient; and whether the person last infeft was the Lyon, or his son, the meaning of the charge was, to make up a title to his predecessor. Another was, that the Act 1474 related to heirs, and not to singular successors. ANSWERED,—Without saying what effect this distinction might have in the case of an heir of tailyie, one thing was clear, that if the Act 1474 did not afford a remedy, even as to a singular successor, no other act did where the heir in the superiority had not made up his titles, which was scarce to be thought. A third was, That whatever might be the case where a superior wilfully lay out, and did not make up his titles to the superiority, the Act did not apply to the case of the petitioner who lies out unentered, not by his fault, but by his misfortune, *viz.* by his not being heir in the superiority, but intending only to adjudge it for relief of debts which the heir of line was bound to relieve him of. ANSWERED,—The act was not intended to punish the superior: the object of it was to relieve the vassal; and, in this case, unless Sir John was so relieved, he neither could let a tack, nor remove a tenant, nor be considered as proprietor of Brimms, in several respects.

The Lord Stonefield, Ordinary, having, 14th December 1771, repelled the reasons of reduction, and assoilyied the defender; upon advising petition and answers, the Lords adhered.

1777. *June 27.* The MAGISTRATES of EDINBURGH *against* STRATTON.

A SUPERIOR, when he grants an original feu, may not only qualify it with such conditions as he thinks proper, but, when he renews it to the heir of the vassal, by precept of *clare*, may further burden it; and if the vassal's heir accepts of a precept under these new conditions, they will be as binding as if contained in the original investiture. So the Lords thought with regard to an astriction of thirlage.