1677. *June.* JOHN KINCAID *against* GORDON of Aberzeldie.

MR JOHN KINCAID, advocate, pursues Gordon of Aberzeldie upon the passive titles, (see the preceding number, sections 5, 6, 7, and 8,) for payment of a debt owing by his father; and for purging his intromission with the rents of lands. He having produced a tolerance from the donatar to the liferent, the tolerance was offered to be improven. Whereon Aberzeldy took it up, and the Lords allowed him to pass from it; (which is strange, and may encourage all falsehood;) and to propone a new dressed defence, viz. that the escheat was gifted and declared. Which they found relevant, *per se*, to purge the passive title of vitious intromitter, he being singly countable to the donatar; and so would not burden him to subsume that he bruiked and possessed by his tolerance and licence. *2do*, He defended himself upon a comprising of his father's lands, which he had acquired, and so was a singular successor. Mr John Kincaid offered to redeem him, conform to the 62d act of Parliament in 1661, between debtor and creditor.

ANSWERED,—Mr John was only a personal creditor, and so by the act of Parliament 1661, had no interest to redeem, the act only allowing that benefit to posterior apprisers.

REPLIED,—A personal creditor may as well redeem from an apparent heir buying in rights on his predecessor's estate, as he may reduce deeds *ex capite inhibitionis*, or *ex capite lecti ægritudinis*, though he establish no real right in his person. However, as it is safest, so it is very easy for the personal creditor, who as yet, hath neither adjudged, nor apprised, to make up a real right in his person, by adjudication or apprising, and that will give him an undoubted interest to redeem the apparent heir. *Vide supra*, *5th July*, 1671, *Kirkconnell*, No. 204. Only the order of redemption must be used within ten years after the heir has acquired the right of apprising or adjudication in his person, or in another's to his behoof, (for thus requires the act 1661;) and not at any time within ten years after the legal of the said apprisings is expired, though it should be longer since the apparent heir had purchased it; as some, by mistake, would have it to be.

Advocates' MS. No. 575, folio 286.

1677. *June* 19. MACMINE *against* NEWLANDS.

IN the suspension, Macmine *contra* Newlands, Halton turned a decreet of the Sheriff of Dumfries to a libel, because the decreet at the compearance did not bear that the procurator had a warrant and mandate from the client employer to compear; especially, it being confessed in the decreet, that the defender was then in England, at Carlylle. But this was pretty hard; for there is not a decreet of twenty that mentions and bears a warrant; and though these inferior procurators [happen] to have one, yet it needs not be mentioned and inserted; and in the reduction of the decreet only the warrant may be called for, and production thereof forced, and if it be not produced, the decreet, *quoad* the compearance, will fall.

2do, Esto it had been a decreet in absence, every such decreet is not to be in-