

were tenants of the lands of Allantonhauch, the same being exacted from them for the cess due forth of these lands: it was ALLEGED, That the defender was noways liable in that debt, because he had an elder brother, viz. Robert Hamilton of Monkland, who was heir general or heir of line to his father, and so behoved both to be convened and discussed before any heir of conquest, provision, or of the second marriage, such as this defender is.

To which it was REPLIED,—That though *regulariter*, the heir of line must be first discussed, yet there was no necessity of using that order of discussing here, because this defender succeeding as heir to the very lands wherefore this cess was paid, and upon account whereof this debt was contracted, and it being exacted then from the tenants as *debitum fundi*, it were but just they should have the same privilege in the repetition whereof, and be put to know none save the possessor of the land, especially he succeeding thereto as heir.

My Lord Craigie refused to sustain process against this defender, till the heir of line were first discussed, notwithstanding of all the specialities in the case; and called to mind, that in an action betwixt the Duke of Lennox and his sister, the Lords ordained the heir of line to be first discussed: albeit it was alleged, that the debt acclaimed was contracted upon the account of those lands to which the heir of provision (whom they were insisting against) had succeeded.

*Advocates' MS. No. 354, folio 146.*

1672. *June 26.* Anent WITNESSES' EXPENSES.

The Lords have laid down a certain rule for witnesses' expenses in all time coming, whether they be adduced in causes civil or criminal; viz. they have modified to each footman two groats *per diem*; and to every horseman four groats.

See in January 1679, in George Young's case. *Sneidivin, ad parag. 24 and 25, Institut. de actionibus, pag. 1426.*

*Carolus quintus, Imperator*, appoints *octo cruciferos* for a witness's expense *per diem*.

*Advocates' MS. No. 355, folio 146.*

1672. *July 2.* Anent REDUCTION EX CAPITE INHIBITIONIS.

*Queritur*, if a man who pursues to have deeds reduced, *ex capite Inhibitionis*, or such like, be obliged to call in his process the granter of the said deeds, sought to be reduced, and he being dead, his representatives: seeing if the deeds be annulled, the granter stands bound in warrandice, and so is concerned that they be not reduced; and also he may be able to say many things against that creditor who pursues the reduction, that may be noways consistent in the defender's knowledge.

I think it safest the author be called, just as the principal debtor must be called