sede vacante, to the stipend since the expiring of the Act of Parliament 1672, given them for seven years to the Universities; and preferred Sir Robert as patron to the College; notwithstanding of the Act of Privy Council prorogating the Act of Parliament and giving them the vacant stipends. Which was to make an interfering of jurisdictions, and cause the Session annul summarily Acts of Privy Council. Only some of the Lords of Session are patrons of churches, and they looked on the Act of Privy Council as *parte non citatâ nec auditâ*, and null, unless the several patrons had given their assent thereto. And the 115th Act Parliament 1592, and first Act 1612, give the patron the fruits, if he present a qualified person, and he be refused; and though the Parliament may prejudge patrons (where their consent is also tacitly implied,) yet the Privy council cannot. By the canon law, the patron had the fruits *sede vacante*, but not for his own private use, except he fell poor; but he behoved to apply them to a public or pious use. Craig says, *Fructus, vacante sede, hodie apud nos ad principem aliumve patronum pertinent, quorum rationem reddere non tenentur.*

By the old canons, the vacant fruits were divided into three, *viz.* to the next entrant succeeding; the fabric of the church; and the poor. The Pope after this assumed the disposal of them; in whose place our king succeeds by the Act of Annexation 1587, though teinds be not there annexed.

Vol. I. Page 131.

1681. *February* 23. The Lady Aberlady and Hugh Kennedy her Husband *against* Fletcher of Aberlady.

The Lady Aberlady and Hugh Kennedy late of Ardmillan her husband against Fletcher now of Aberlady.—The debate, if her annuity of 2500 merks ought to bear a proportional part of the public burdens, being reported, the Lords found the minor's father Sir Andrew Fletcher having been in possession and use of payment of said annuity without burdens, the chargers must be free for bygones; which likewise they declare shall free the tutors and curators. And sustain the allegeance that Aberlady, this minor's father, retained a stock of which he paid no annualrent, nor is to pay till the decease of the Lady, to liberate her from the burdens in time coming; and find the answer relevant, that the stock foresaid was affected with debts due by Mr John Hay of Aberlady, the disponer, and the charger's first husband. See Nov. 1673, [page 33,] where the annuity was granted with absolute warrandice; but this alone was repelled as not sufficient to free her against public burdens, seeing she was infeft on it.

Vol. I. Page 132.

1681. *February* 23. Lady Idington *against* William Kirkwood.

Lady Idington having charged William Kirkwood in Dumbar, on his tack, for payment of the tack-duty; and he suspending on this reason, That he had paid it to Doctor Stevenson and Mr Robert Ker, who had infeftments forth of the lands set to him in tack;—the Lords, on report, found that the tenant ought