der the Earl's father's hand, he had renounced and discharged all these casualties. *Answered* for the Earl, None of these obligements can tie me, unless I represent my father, the granter; neither is a perpetual discharge of a feu-duty a *habilis modus* to extinguish it, nor is it real *contra fundum*, but merely personal upon the granter and his heirs; yea it is against the nature of a feu to discharge the recognizance and acknowledgment which the vassal owes to the superior; and it is *inter essentialia feudi* to have a *reddendo*; and to discharge it *in perpetuum* is equivalent as if it had none at all; yea, it will not so much as militate against the granter's successor for any years, but allenarly so long as the granter continues to have right to the superiority; for if he be legally denuded, then his singular successor may claim the feu-duty; neither will the discharge exclude him, reserving their recourse against the granter and his heirs. *Replied*, The Earl must be presumed to be heir, unless he instruct by what singular title he possesses; and till then he cannot quarrel his father's discharge. THE LORDS found, that *affirmanti incumbit probatio*, and seeing they libelled and replied on his representing, and that being their *medium concludendi*, they must prove it. If the Earl were pursuing his vassal, he behoved to shew his title; but in this process of declarator against him, he needed say no more but deny his representation, and if they succumbed, he would be assoilzied from this process; for the LORDS unanimously agreed that the foresaid perpetual discharge of the feu-duties and other casualties and astriction were merely personal, and only binding during the granter's lifetime, or his right, but could not operate against a singular successor.

No 84.
Found that this was merely personal, and binding only during the granter's life.

Fol. Dic. v. 2. p. 68. Fountainhall, v. 2. p. 72.

1731. *December* 11. Lady CASTLEHILL *against* Sir JAMES STEWART of Coltness.

No 85.

A PROPRIETER having disponed part of his barony, holding blench of himself, became obliged, under a penalty, to enter the heirs *gratis*, and likewise to dispone *gratis* the liferent escheats of his vassals in these lands, so oft as the same should fall into his hands; this clause was not found real against singular successors in the superiority.

Fol. Dic. v. 2. p. 68.

1734. *July* 24. GARDEN of Bellamore *against* Earl of ABOYNE.

No 86.

IN an original feu-charter, though woods were disponed along with the lands, there was this remarkable restriction laid upon the vassal, "That it shall not be leisom for him or his heirs to cut, sell, or give away, any of the trees, but allenarly for their own particular use and their tenants;" but this clause did not