and others, that gave rise to act 18th 1567,—that from that time it was their declared meaning in the acts *salvo*, that by these acts they did not hurt third parties unheard. Notwithstanding of which where by the tenor of the acts, the contrary appeared, we never would judge contrary to them, witness 10th December 1622, Earl of Rothes against Gordon, and other cases therein quoted. And as to the Crown, King James II.'s act had provided a special remedy, and which was carefully followed in all after annexations, least the Parliament should be led in to ratify alienations of annexed property without knowing it was annexed. But still, if the Parliament with their eyes open should ratify such alienations and dispense with that law, it would be no objection that it was only a ratification; otherwise the presumption was, that the Parliament did not mean to annalzie annexed property; that such was the meaning of the annexations both by James II. and subsequent Kings, appeared by our act of sederunt 14th March 1594, afterwards made an act of Parliament 247. 1597, and the exception contained in it, by which it is plain that the doctrine since adopted by some lawyers that a previous dissolution was essentially necessary was not then true. But in the ratifying erections of regality the Parliament could not be misled, for though they might not know that lands in a ratification had before been annexed to the Crown under the general name of some earldom, lordship, or barony of different name, yet they behoved to know that the erection of a regality was what could not be done without their consent; and therefore, as there could be no question of the power of King and Parliament, I thought in that case there could be none of their intention. Besides, I did not think the Parliament meant those ratifications to have no effect, and I could not dispute the Parliament's power to give them all the effect they intended. We seemed to agree that the claimants were mistaken as to the Lords of articles, and that they were not always chosen by the Parliament, often before it. But how the private acts were passed in ancient times we could not know,—probably they must have first passed the articles where the Parliament sat but one day. *Vide* my Notes on the back of Mr Murray of Philiphaugh's claim as to the point of the positive prescription,—we were unanimous.

## No. 44. 1748, Jan. 21. EARL OF MORTON'S CLAIM OF JUSTICIARY OF ORKNEY.

ON advising memorials *hinc inde* we found him entitled to a Justiciary, but only subordinate to the High Court of Justiciary, and therefore not entitled to any separate recompense.

*** There likewise appears in the manuscript the following note relative to Earl of Morton's claim of the regality of Aberdour, under date 16th January 1748.

THIS had formerly been part of Dalkeith, but having sold Dalkeith to the King, it was by the contract declared that it should not prejudge his regality as to his other lands, and Aberdour declared the head burgh. He claimed this jurisdiction over many lands lying in different counties, even as far I believe as Kirkcudbright, which were all in his charters, though he could not even say that the proprietors of these lands had ever owned him as their superior. He produced documents of possession by holding some few Courts at

Aberdour, but showed no possession as to those lands lying in other jurisdictions. As to such of them as are now come to hold of the King, there could be no question that they were thereby dismembered from the regality. The only question was as to any of them that might be found yet to hold of him, and some of us thought, (particularly Dun,) that exercising this jurisdiction over a part of the regality preserved it as to the whole. But both Arniston and I thought it did not, and that these vassals had acquired an immunity by prescription, unless in their charters their lands were designed as lying in that regality. We therefore found him entitled to a regality, but before answer as to the extent ordained him to shew the vassal's rights in the records or otherwise, and what was the tenor of them.

## No. 45. 1748, Jan. 26. LORDS OF REGALITY AND BISHOPS, *Claimants.*

THESE were claims of heritable Bailiaries of regalities, some of them Bishops regalities and others lay regalities.

Upon Arniston's motion this day was appointed for hearing counsel, Whether a Lord of regality could create an heritable Bailiary? and 2dly, Whether in particular a Bishop who himself has his office for life can with his chapter create an heritable Bailie, or if that is not a dilapidation; and we gave both points for the claimants, *renit. multum* Arniston, *et* Tinwald. My reasons in short were, first, The universal custom; 2dly, They had the same power to do so that a Baron had to create an heritable Bailie, and that he did in all cases where he feued land *cum curiis et bloodwittis*, for it was only as his Bailies they could judge; 3dly, M'Kenzie, Tit. JURISDICTION OF REGALITIES, supposes it; 4thly, In all the decisions of this Court ancient and modern, that was taken for granted, even where a contrary judgment would have determined the question, witness the decision 1713, betwixt Duke of Montrose and Arncaple, touching Arncaple's claim to the heritable Bailiary of the regality of Lennox; and a decision about 1610, about a gift of escheat by an heritable Bailie of regality of St Andrews, betwixt Earl of Winton the heritable Bailie, &c. and many others; 5thly, The act of annexation 1587 and other acts that supposed these heritable Bailiaries to have been lawful grants. As to the second, besides some of the former arguments, that applied also here, I doubted if this was in our law a dilapidation, or that Bishops were upon the footing either of our liferenters or heirs of entail: That the Bishops must act by a Bailie, and I thought his commission ought to be a liferent one, and all the dilapidation by making it heritable was, that the next Bishop had not the choice of a new Bailie on the death of a former one: That with us nothing was accounted dilapidation but what diminished the rental: That the Bishop was *plenus dominus*, and with his chapter could do every thing that another proprietor could, where the law did not restrain him, and that was only not to diminish his rental, and therefore could feu out his property lands if it was without diminution of his rental, and it was no dilapidation that his successors had not the choice of new tenants or new entries, and therefore no more was an heritable Bailiary a dilapidation; and this confirmed by 29th act 1690, which expressly mentions heritable offices held of Prelates.