The Lords, notwithstanding, ordained him to make answer to the petition, as having in their power, upon great necessity and weighty considerations, to proceed summarily upon bills. Which seems hard, albeit the case was favourable.

Page 532.

1676. *February* 3. THOMAS BULTIE *against* The EARL of AIRLY.

THE Earl of Airly's father being debtor to one Melvill of Pittachope, by two several bonds, this Earl did grant a bond of corroboration in favours of Melvill. The two principal bonds being assigned by Melvill to one Rollo, but not the bond of corroboration, Thomas Bultie, as having right to the assignation, did pursue this Earl of Airly for payment.

It was ALLEGED for the Earl, That there could be no process upon the bond of corroboration granted to Melvill, because it was not expressly assigned, but only the two principal bonds granted by his father; and the pursuer having no right thereto, Melvill might discharge the said Earl, having still the right in his person to that bond.

It was REPLIED, That the assignation did bear, not only a right to the two bonds, but a general clause, and to all that had followed thereupon; and the bond of corroboration being *accessorium, sequitur principale.*

The Lords did sustain the action, upon the assignation bearing that general clause; which they found to comprehend not only all legal diligence, but likewise all additional securities, unless they had been particularly reserved in the assignation; or that, before the assignation intimated, the Earl of Airly had obtained a discharge of his bond of corroboration, or had retired the same before it was cancelled; which they found relevant to be proven: otherwise they found him liable, and that he was *in tuto* to make payment to the pursuer.

Page 536.

1676. *June* 9. ALEXANDER BURNET *against* WILLIAM GIBB.

IN a spuilyie of teinds, at Burnet's instance, as having right, by a tack from the Bishop of Aberdeen, to the teind sheaves of the lands within the parish of St Nicholas, whereof Footsmyre, belonging to the defender, was a part;—it was ALLEGED, The tack could give no right to the teinds, being of madder herbs and roots, whereof no teinds can be due; neither parsonage nor vicarage.

It was REPLIED, That the pursuer's author did take a tack of his whole lands, whereof this Footsmyre was a part, and so could not evite the same by inclosures, and making it a yard for herbs only; which is not lawful for heritors to do, in prejudice of titulars or tacksmen, who have been in possession.

The Lords found, that an heritor may take in his lands by inclosure, and neither sow the same with corn, nor put in bestial, which may yield vicarage teinds. Which was hard in general; seeing *decimæ* are *patrimonium ecclesiæ;* and heritors taking tacks cannot invert and frustrate the titulars altogether, unless they be liable for damage and abstraction; which might be of a general