

1621. December 21. HAMILTON against DURHAM.

MR PATRICK HAMILTON pursues Sir James Durham of Duntarvie, who was his debtor in sums of money, and Francis Stuart, who was debtor to Sir James, to hear the said Francis decerned to pay, and make furthcoming, the sums addebted by him to Sir James, conform to his arrestment, for satisfaction of that debt owing by Sir James; wherein Sir James being debarred by horning, Francis compeared, and *alleged*, that the pursuer was satisfied, by Sir James himself, of that debt owing to him, and so he could not pursue Francis to make the same furthcoming. The pursuer *answered*, That that was not competent to him to allege, who was debtor to Sir James, who not proponing the same, he had no interest.—THE LORDS repelled the allegiance, and found that the same was not competent to be proponed by Francis Stuart, who purged not the debt owing by himself to Sir James.

Act. Primrose.

Alt. ———.

Clerk, Scot.

Fol. Dic. v. I. p. 517. Durie, p. 8.

1626. December 20. ——— against SCOT.

AN apparent heir offered to renounce, and the creditor thereupon craved decree *cognitionis causa*. Another creditor also compeared, and *alleged*, that he could not renounce, having intromitted with his predecessors' goods, &c. He was refused to be heard, because he might insist in a process by himself, and there qualify the person to be heir, as accords. But it was found this could not stop the pursuer in the course of his diligence, *qui sibi vigilavit*.

Fol. Dic. v. I. p. 521. Durie.

* * * This case is No 1. p. 43., *voce* ADJUDICATION.

1627. July 13. KING against KER.

A mother who contracted a tocher with her daughter, at her marriage, was found entitled to repete the same from the husband, her daughter having died within the year; although it was *alleged*, that the tocher was paid out of the daughter's means, and, therefore, repetition competent only to her representatives; in regard, it was *jus tertii* to the husband to plead upon their right, and he ought to repete to the mother, from whom he got it, she being liable to her daughter's representatives, if she intromitted with her money; only she

No 24.

A person, in whose hands an arrestment was laid, was not allowed to plead, that the arresting creditor could not insist in a furthcoming, having received payment from the common debtor.

No 25.

No 26.

No 26. was ordained to find caution to the husband, to warrant him at their hands, and at the hands of all others claiming interest.

Fol. Dic. v. I. p. 517. Durie.

*** This case is No 380. p. 6169., *voce* HUSBAND and WIFE.

No 27. 1628. *January 15.* FALCONER *against* BEATIE.

FOUND *jus tertii* to a debtor in a bond to plead upon a backbond granted by an assignee to his cedent, obliging himself, that the sum should return to him, in case the assignee predeceased him, although the event actually happened.

Fol. Dic. v. I. p. 517. Durie.

*** This case is No 34. p. 5465., *voce* HERITABLE and MOVEABLE.

No 28. 1028. *July 11.* SKELTON and His TUTOR *against* BROWN.

A haver of writs was ordained to deliver them up to a tutor dative, who had found caution, notwithstanding the defender offered to prove, that there was a tutor nominated in the testament.

Fol. Dic. v. I. p. 520. Spottiswood.

*** This case is No 9. p. 4647., *voce* FOREIGNER.

No 29. 1630. *July 23.* LAIRD of PITSLIGO *against* ALEXANDER DAVIDSON.

IN a reduction of a retour pursued by the Laird of Pitsligo against Alexander Davidson, whereby the defender was served general heir to William Forbes, Laird of Pitsligo, the pursuer's grand-uncle; *alleged*, The pursuer had no interest to quarrel his service, because he was not the party who was next of blood to the said William, although the defender's retour were reduced, and so could not call his descent in question. *Replied*, He had good interest, because the defender, upon that service, had intended a reduction of certain infestments pertaining to the pursuer, for eschewing whereof he had reason to reduce his title. *Duplied*, Although he reduced his retour, yet there was another heir of line to William, that had the right the defender hath to reduce the pursuer's infestments. THE LORDS found the pursuer had very good interest to pursue, except the defender would renounce any right he did pretend to quarrel the pursuer's lands.

Fol. Dic. v. I. p. 519. Spottiswood, (INTEREST,) p. 181.

*** See Durie's report of this case, No 111. p. 7402., *voce* JURISDICTION.