

1634. February 7. GILHAGIE against WARDROP.

No 7.

In conformity
with Nisbet
against Nis-
bet, *supra*.

ONE Gilhagie, for debt owing by umquhile ——— Wardrop, having obtained decret against Wardrop's son, as lawfully charged to enter heir to him, and having arrested the mails and duties of his lands therefor, and having obtained sentence to make the same furthcoming, and also having comprised the said lands from the said son, as charged to enter heir to his said father, who was debtor, and thereupon being infest, the tenants who were decerned to make the mails furthcoming, suspend, that they were distressed therefor by the creditor, and also by the son; who comparing, claimed the mails as due to him, who was infest in the lands by hasp and stapple, as heir to his goodsir, and not to his father; likeas he renounced to be heir to his father; and the creditor opposing his sentence, comprising and infestment, which he alleged could not be taken away this way without reduction, seeing his renouncing to be heir, might well hinder personal execution, but could not stay any real execution;—the LORDS found the son's allegiance relevant, that he renounced to be heir to his father, and that he was infest as heir to his goodsire, and received the same in this place, by way of suspension, and double pointing, without necessity to reduce; seeing that renunciation to be heir was found sufficient to stay all execution both personal and real against the son, for all things which he bruiked, and pertained to him otherwise than as from his father, seeing it was never alleged by the creditor, that ever the father was infest in the lands comprised.

Clerk, Scot.

Durie, p. 701.

1675. June 18. IRVING against ———.

No 8.

Has the heir
renouncing
any further
interest in the
proceedings?

FRANCIS IRVING having pursued ———, as representing his debtor upon a renunciation to be heir; the defender was assoilzied, and the pursuer obtained decret *cognitionis causa*, and thereupon pursues an adjudication; at the calling of which summons by a clerk, the same was desired to be seen for the defender, who had renounced, and both applying to the Ordinary, he reported the case. The pursuer *alleged*, That albeit the defender was called in the adjudication, it was only *dicis causa* for form's sake; and the defender hath no more interest to compear, than when a citation is at the market-cross against all and sundry, *quilibet ex populo* pretending to be called thereby, should crave to see; which though it used not to be debated before the act of regulation, yet since, if the person renouncing shall be found to have interest to see and answer, and that the process must be enrolled, the pursuer will be postponed a long time, and others preferred, or the year may expire before his pro-