

though he was posterior in arresting, yet he had prevened the other in diligence, and was pursuing to make forthcoming; whereas Crawford had done nothing on his arrestment.

REPLIED, that, beside his arrestment, he had also an assignation to the same sum from the creditor in it, who was their common debtor, and that he conjoined his two titles. (*Infra No. 492, § 6.*) [July, 1676.]

DUPLIED, his assignation was of no value, being after the arrestment laid on by the duplier; and two imperfect and invalid titles could never be joined in prejudice of him who had a right, and had done diligence, preferable to any of them *separatim*.

The Lords preferred him who had the two titles, though apart they were lame, *ut quæ non prosunt singula, multa juvant*.

Many doubt if this was well decided, seeing as M^r.K. in his pleadings, page 61, has it, weak arguments conjoined can, by their mutual assistance, never astruct a right, no more than many cyphers can make a number, or many uncertainties a certainty. (Yet many beams of light may make a perfect light.) *Omnino, vide Taylor in his Ductor Dubitantium, lib. 1, cap. 4, p. 91.*

Facit lex unica, C. Qui numero tutelarum se excusant, l. 15, par. 11, D. De excusationibus tutorum. Vide tamen, l. 5 et 6, C. de probationibus; from which commentators infer the conjunction of divers sorts of probation. Vide Vinnium Selectarum Quæst. 44; L. 28, p. 3, D. ex quibus causis majores; l. 27, C. de testamentis, cap. 13, extra, De probationibus; cap. ultimo, extra, De successionibus ab intestato.

Advocates' MS. No. 399, folio 217.

1673. June.

ANENT CERTIFICATIONS.

IN certifications, it is undoubtedly a good defence, that the writs craved to be produced, either in a reduction or improbation, are in the pursuer's own hands; and Hadington shows that it was so found in an improbation pursued by the Laird of Corstorphin against the Old Lady Corstorphin, at the 16th of December, 1609, No. 80.

Advocates' MS. No. 401, folio 218.

1673. June. MARGARET HOME *against* MARGARET SMITH.

IN an action of reduction pursued by one Margaret Home against one Margaret Smith, for reducing of a disposition of some lands in Dunce made to the defender, this reason was mainly insisted on, That the said disposition was, by act of Parliament in 1621, null, being made to a conjunct person, (*videlicet*, to the granter's sister-in-law, whom the common law æquiparats to brothers and sisters in this case,) without any onerous cause, in defraud of lawful creditors and their diligences. *Vide l. 27, C. De Donationibus.*

ANSWERED, The act of Parliament 1621, by confident persons, means only fathers, brothers, and sons, and not brother and sister-in-law, and such remote degrees; neither does the civil law æquiparat them in this case.

(Yet the Lords have found brothers-in-law confident persons, which is just our case here; See *Dury*, 23d March, 1624, *Duff* and *Kelly*: but did not find an uncle and nephew so; 28th January, 1625, *Levinston*.)

REPLIED, That this were to open a door to all fraud and collusion; and that, by the common law, the prohibition that is in consanguinity, either for marriage, diction of testimony, &c. is extended to all the same degrees of affinity, the affection being oftimes the same.

The Lords ordained the defender to condescend upon the onerous causes of her disposition; notwithstanding that it bore to be granted for onerous causes, in which cases strangers are never burdened with any farther probation: so that upon the matter the Lords inclined to find her a conjunct person.

See M'Kenzie's observes on the act of Parliament 1621, page 66, where they found her a conjunct person.

Advocates' MS. No. 402, folio 218.

1673. June.

ANENT NON-ENTRY DUTIES.

IT is reported the Lords have found in an infeftment of annualrent, where the destination runs thus, the granterto pay annualrent as well not infeft as infeft; in that case the non-entry mails are only the blench or feu-duties. The reason whereof appears to be, because the creditor can ascribe what he has got to the said personal obligement, and not to the real right; but if it want that clause, then the annualrent, according to the received practique, being in non-entry, *valebit seipsum*. But our custom may deserve correction, where, upon a nicety of law, an annualrent falling in non-entry is entirely due to the superior, whereas equity seems to ordain that the superior's interest here should be no other than in other non-entries; all of them being unfavourable, and to be restricted. See more of this *alibi*.

Advocates' MS. No. 403, folio 218.

1673. June. DR ARCHIBALD STEVINSONE *against* The EARL OF TWE-DALE.

DOCTOR ARCHIBALD STEVINSONE, pursuing (as executor to his father Mr A. Stevinson, minister at Dunbar) the Earl of Twedale, as representing the deceased Earl, his father, upon one or other of the passive titles, for payment of his proportion of the stipend due for the lands of Beltane, for the year 1630: ALLEGED, He nor his father could never have been liable for that year, because the teind, yea, the stock itself, was wasted by the calamity of war, and the English their incoming that year, and lying about Dunbar.

ANSWERED, That he having pursued the Earl of Roxburgh for some stipend