

No 51. thereby of the expiring of the legal, albeit the debate was betwixt two singular successors, as they remember they had done before, betwixt Mr William Kintore, who had adjudged, and John Boyd, who had apprised the estate of Burncastle, (*See APPENDIX*); considering that, in most apprisings or adjudications, nullities may be found, which would be abundantly sufficient against any legal advantage, but not against the just interest of creditors: They did also sustain the allegiance of agreement with the relict for 700 merks for the aliment, albeit it was omitted in the first instance, seeing the decret was defective; and though they should fail in proving thereof, declared they would modify the aliment to a lesser quantity; and found Wauchope's intromission, as to a third part thereof, was unquestionably to be imputed in satisfaction of this apprising, which was of the interest of two of the six heirs-portioners; but resolved to hear the parties as to the rest of the intromission.

*Fol. Dic. v. 2. p. 306. Stair, v. 1. p. 250.*

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1676. July 21. HAY against Earl of TWEEDDALE.

No 52.

PROCESS was sustained at the instance of an heir of a marriage, he making up his service *cum processu*.

*Fol. Dic. v. 2. p. 303. Stair.*

\*.\* This case is No 21, p. 12857. *voce* PROVISION TO HEIRS AND CHILDREN.

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1676. November 28. KER against KER.

No 53.

It being *alleged* against a donatar, That a debt pursued for was heritable *quoad fiscum*, and *replied*, That the pursuer had right thereto as executor-creditor; the LORDS snstained process upon that title though supervenient, the testament being confirmed after intending the cause.

*Fol. Dic. v. 2. p. 305. Stair. Dirleton. Gosford.*

\*.\* Stair's report of this case is No 102. p. 3926. *voce* EXECUTOR, and Dirleton and Gosford's are No 4. p. 9253. *voce* NEAREST OF KIN.

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1678. July 19. POWRIE FOTHERINGHAM against MARQUISS of DOUGLAS.

No 54.

AN adjudication found invalid because the ground of it was a gift of non-entry, which ought first to have been declared before it was a liquid debt, and it was still undeclared.

*Fol. Dic. v. 2. p. 307. Fountainhall, MS.*