

tained to the Lord Pitmedden against the Countess of Dumfermline, within these few years. If it were a single title, by assignation or the like, there indeed it must precede the summons, and cannot be retrotracted; but it is otherwise in services of heirs; and Sir James Elphinstone's right as executor-creditor can never support Balmerino's title to the bygones preceding Couper's death; but that the attested double could give no title for preceding years without the principal were produced; and that Balmerino could not found on Sir James Elphinstone's right; and seeing the retour was but lately produced, therefore they found my Lord Strathmore not bound presently to answer thereto, until he were allowed some days to see it in the clerk's hands, but that it ought to be received *incidenter* in this same process, without obliging Balmerino to raise a new one.

No 63.

*Fountainhall, v. 2. p. 309.*

1707. February 22.

JOHN JOLLY Merchant in Edinburgh against THOMAS BETHUNE of Tarvit, Mr ALEXANDER BRUCE, and Others.

No 64.

JOHN JOLLY merchant in Edinburgh, having by virtue of a general disposition from James Reid merchant there, not intimated in the granter's lifetime, raised horning upon a bond granted to the said James Reid by Sir William Preston of Valleyfield as principal, and the Earl of Kincardine as cautioner, without confirming the debt; and arrested in the hands of Thomas Bethune of Tarvit, Mr Alexander Bruce, and other debtors to the Earl, and pursued a furthcoming; the LORDS found the horning null and unwarrantable, and that the arrestments thereon could not subsist to have the effect of an arrestment upon a depending action, albeit the arrester should now confirm the debt. Though the general assignation would have been a good foundation for a summons, whereupon Mr Jolly might have used arrestment.

*Fol. Dic. v. 2. p. 306. Forbes, p. 136.*

1707. March 13.

GEORGE ROBERTSON, Writer in Edinburgh, against Dame ANNA HOUSTON, and the LORD JUSTICE CLERK, her Husband.

No 65.

GEORGE ROBERTSON, writer in Edinburgh, as creditor to the deceased Mr James Hamilton of Bangour, and now to John Hamilton, his son and heir, raised a reduction and declarator against Dame Anna Houstoun, and the Lord Justice Clerk, her husband, for his interest; concluding, that the pursuer had

A personal bond, granted by an apparent heir, sustained as