

No 98.

veniently advertised, or craved commission to the Judges where he was to take his oath, if there had been reason for granting the same; notwithstanding whereof, the LORD found that he ought to be reponed, and restored him to the giving of his oath, specially seeing nothing had followed upon the decret, and seeing it was confessed by Thomas Wright that he had consented to the posterior alienation of the ship, and that the price was given to his creditors.

Act. *Nicolson.*Alt. *Mowat.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 184. Durie, p. 497.*

\* \* \* Auchinleck reports this case :

JAMES WRIGHT being pursued by Thomas Wright, and in the said James's absence out of the country, he is held as confest. After three or four years absence, he returned and meaned himself to the Lords, and craved to be reponed to give his oath, being, the time of his absence, in Muscovy, where he could receive no advertisement; and the matter whereupon he was to depone was so clearly untrue, that it were great injustice to discern him as confest for contumacy. THE LORDS, after trial of the whole matter, found he ought to be reponed, although it is contrary to the daily practics.

*Auchinleck, MS. p. 151.*

No 99.

1634. *Jrnuary 14.*CUNINGHAM *against* ROLLOCK.

IN an action of reduction pursued by John Cuningham against Robert Rollock, whereby the said John craves to be reponed to his oath and defences, because the decret was obtained against him for null defence and he not summoned, or at least not lawfully summoned, as the executions bear, which were vitiated in the days of compearance, and the principal summons both disconform in the days of compearance, and summoned to the second diet upon the            day of            ; which being so found by the executions, and            the first summons with the second, the LORDS reponed John Cuningham to his oath and whole defences.

*Auchinleck, MS. p. 175.*1637. *February 25.*DUNCAN *against* FRAZER.

No 100.

ONE Frazer having wadset his lands to one Duncan, redeemable upon 5000 merks, and *alleging*, that at the time of the wadset, Duncan promised that what the prices of the victual, according to the fiars of the year, extended to