

No 8.
Found as above.

1592. December 20.

GUTHRIE against GUTHRIE.

IN an action pursued by James Guthrie of ———, against Guthrie of Colestoun, for probation of the tenor of a tack, alleged to be made by the Cardinal Abbot of Arbroath to the said James's father, his mother, his eldest brother and himself, as part and portion of the said lands of Colestoun, &c.; it was *alleged* by the said Guideman of Colestoun, That no process should be granted to the said James, for probation of the said tenor, in respect that he had two other actions depending for the said tack; the one for transuming of the said tack furth of the register of Arbroath, the other for delivery of the same against the said Guthrie of Colestoun and others, alleged having thereof, and so *quando subest spes recuperandi*, the pursuer can never have place to prove the tenor; because this inconvenience might follow, that in-proving the tenor, the principal might thereafter be found of a tenor contrary to that which would be proven in this instance. THE LORDS, by their interlocutor, found that the said pursuer would not be heard to pursue this action of the tenor, unless he would renounce the other actions for recovery of the tack itself.

Fol. Dic. v. 1. p. 186. Haddington, MS. No 60.

S E C T. III.

Where the Conclusions of two Actions are only Different, not Contradictory, both may be Insisted in.

1633. July 25.

MITCHEL against LAW and STUARTS.

No 9.
Though a party deforced has pursued criminally, *ad vindictam publicam*, for punishment, he may thereafter pursue civilly for his private interest.

DAVID MITCHEL having raised caption against Alexander Barclay, younger of Maters, who was rebel at his instance, for sums of money; whereupon a messenger, at his instance, having past to apprehend him, and having met with him, Mr George Law, George and Robert Stuarts being in the rebel's company, impeded the said officer, and debarred him from taking of the rebel, and put him away with violence, with drawn swords and pistols; whereupon the said David Mitchel intents action against them for payment of these sums, for which the rebel was to have been apprehended, and for which he was rebel at the pursuer's instance. The defenders *alleging*, That this was an action of the nature of deforcement, which ought to