

1621. December 21. HAMILTON against DURHAM.

MR PATRICK HAMILTON pursues Sir James Durham of Duntarvie, who was his debtor in sums of money, and Francis Stuart, who was debtor to Sir James, to hear the said Francis decerned to pay, and make furthcoming, the sums addebted by him to Sir James, conform to his arrestment, for satisfaction of that debt owing by Sir James; wherein Sir James being debarred by horning, Francis compeared, and *alleged*, that the pursuer was satisfied, by Sir James himself, of that debt owing to him, and so he could not pursue Francis to make the same furthcoming. The pursuer *answered*, That that was not competent to him to allege, who was debtor to Sir James, who not proponing the same, he had no interest.—THE LORDS repelled the allegiance, and found that the same was not competent to be proponed by Francis Stuart, who purged not the debt owing by himself to Sir James.

Act. Primrose.

Alt. ———.

Clerk, Scot.

Fol. Dic. v. I. p. 517. Durie, p. 8.

1626. December 20. ——— against SCOT.

AN apparent heir offered to renounce, and the creditor thereupon craved decree *cognitionis causa*. Another creditor also compeared, and *alleged*, that he could not renounce, having intromitted with his predecessors' goods, &c. He was refused to be heard, because he might insist in a process by himself, and there qualify the person to be heir, as accords. But it was found this could not stop the pursuer in the course of his diligence, *qui sibi vigilavit*.

Fol. Dic. v. I. p. 521. Durie.

\*\* This case is No I. p. 43., voce ADJUDICATION.

1627. July 13.

KING against KER.

A mother who contracted a tocher with her daughter, at her marriage, was found entitled to repete the same from the husband, her daughter having died within the year; although it was *alleged*, that the tocher was paid out of the daughter's means, and, therefore, repetition competent only to her representatives; in regard, it was *jus tertii* to the husband to plead upon their right, and he ought to repete to the mother, from whom he got it, she being liable to her daughter's representatives, if she intromitted with her money; only she

No 24.

A person, in whose hands an arrestment was laid, was not allowed to plead, that the arresting creditor could not insist in a furthcoming, having received payment from the common debtor.

No 25.

No 26.