

No 6. cessity of a second summons, so the like in this case ; but this same instance wa
doubted of by some of the Lords, yet it was found *ut supra*.

Act. *Mowat & Stuart.*

Alt. *Cunninghame.*

Clerk, *Hay.*

Fol. Dic. v. 2. p. 178. Durie, p. 131.

1628. February 23. NASMITH against RUTHVENS.

No 7. DECRET being recovered against a party, and arrestment laid on thereupon
in his debtor's hands, another decret, at the instance of the pursuer's heir,
transferring the title *active* in him, and, in the same sentence, decerning the
party in whose hands the arrestment was used to make forthcoming, was found
null, because they ought to have been done by two several pursuits, and two
decreets ; for if confusion of diets be a cause to annul proceedings of inferior
judges, far more the confusion of sentences.

Fol. Dic. v. 2. p. 180. Durie.

*** This case is No 119. p. 5567. *voce* HERITABLE AND MOVEABLE.

1628. March 27. A. against B.

No 8.

A PARTY against whom the action was first intended, being dead, before whose
decease liti-contestation was past, and probation renounced, the said action be-
ing sought to be transferred against his heir, and the cause ready to be advised,
the pursuer *contended*, That the defender should see no more than the act of
liti-contestation ; the LORDS ordained him to see all, except depositions of
witnesses.

Auchinleck, MS. p. 168.

1628. June 18. PURVES against PURVES.

No 9.

IN an action to make arrested goods forthcoming, Purves against Purves, the
LORDS found the summons needed not to abide second summons of continua-
tion, albeit there was nothing produced instantly to verify, that the defender
was owing the particular goods arrested in his hands to the pursuer's debtor,
the time of the making of the arrestment ; but that the pursuer behaved to take
a term to prove the same, and referred it to his oath, that he was owing the
particulars arrested to this said debtor ; whereby the defender *alleged*, That
the summons should be continued, seeing the same was to be proved by his oath,
and where any thing is referred to the oath of a party, he ought to be twice

summoned; notwithstanding whereof, there was found no necessity of continuation, the cause being of this nature, for making arrested goods forthcoming, and accessory to a sentence.

No 9.

Act. *Saudilands.*Alt. *Belsber.*Clerk, *Clerk.*

• *Fol. Dic. v. 2. p. 178. Durie. p. 375.*

1628. *June 20.* A. against B.

In improbations, if the father and the son both be called, if the father die, the process ceases against the son till new summons be raised against him, except the pursuer insist only for production of rights made to the son himself.

No 10.

Auchintock, MS. p. 168.

1629. *March 19.* HERRIES against Lord HERRIES.

A SUMMONS bearing that a charter was subscribed and perfected to the pursuer of certain lands, and sasine taken thereupon; after the taking whereof the subscriber of the charter having borrowed the same from the pursuer's father (the pursuer being then minor) to be seen by him, the said subscriber and granter cancelled the same, and sinsyne retained possession of the lands disposed; therefore the pursuer craved both that the defender should make up the evident again, and also refund the profits of the lands meddled with by the defender since the cancellation thereof. This action was sustained, and both the conclusions of the summons found relevant, albeit both craved together, and no necessity found first to pursue for the making up of the evident, and then to pursue thereafter for the mails and duties; but the whole summons was referred to the defender's oath *simpliciter*.

No 11.

Clerk, *Hay.*

Fol. Dic. v. 2. p. 179. Durie. p. 438.

1629. *December 18.* LAWSON against Earl of LOUTHIAN'S Heir.

AN action to hear and see a cancelled contract made up, and restored again to its integrity, and also concluding a reduction and improbation, was sustained, being pursued in one summons, to infer both conclusions.

No 12.

Act. *Foullis.*

Alt. ———

Clerk, *Scot.*

Fol. Dic. v. 4. p. 179. Durie, p. 476.