

1670. *July 1.* ANENT COMPETENT and OMITTED.

ONE being charged on a decret, suspended upon a reason: To which it was ANSWERED, That the same could not now be received, because it was competent against the decret and omitted. To which it was REPLIED, That the defence of *competent and omitted* could not be objected where the decret was obtained before an inferior Court, as this was.

My Lord Stair found, if it had been in *re ardua et difficili*, which the ordinary procurators before these Courts could not well understand, that their omitting of a defence then would not have secluded the party from proponing of it now: but being in *re facili et levis momenti*, he found it relevant.

*Act.* Mr. Thomas Murray. *Alt.* Leirmonth.

*Advocates' MS. No. 49, folio 78.*

1670. *July 1.* A poor Englishwoman, FRANCISCA HEATH, *against* my LORD LUNDORS.

THIS was a pursuit for her entertaining him by the space of fourteen or fifteen weeks at London, conform to his subscribed account.

ALLEGED,—The account is null, because it wants writer's name and witnesses.

ANSWERED,—Refers the verity of the subscription to his oath.

REPLIED,—She cannot be heard, except she likewise refer, that the sum is yet resting owing, to his oath. The Lords repelled the reply.

2do, ALLEGED,—That he being incarcerated in the King's Bench at London, for this same very debt, he was set at liberty; in which cases, it is offered to be proven that the keeper of the Bench becomes solely and privative debtor for the same; so that the debtor can no more be pursued. This allegiance was found relevant; they proving the custom. Which, if it were cumulative, would seem just; but as it is conceived, seems very unreasonable.

*Act.* Mr. William Baillie. *Alt.* Cheap.

*Advocates' MS. No. 50. folio 78.*

1670. *July 1.* The MASTER of GRAY *against* RAMSAY.

THIS is a declarator of non-entry at the superior's instance against his vassal. Against which it was ALLEGED, That the lands were full, the years acclaimed; in so far as the defender had comprised the same, and was infest therein, at least had charged the superior. Which allegiance the Lords sustained for stopping all declarator of non-entry for all years from the date of the infestment, or of the lawful charge.