

behoved to confirm, and take a dative *ad omnia* before extracting of the decret.

No 29.

*Newbyth, MS. p. 28.*

1666. February 1.

A. against B.

AN executor-dative, *ad omnia et mala apprehiata* pursuing the principal executrix, and referring the goods omitted, and prices, to her oath, she *alleged*, that she had already deponed at the giving up of the inventory, and could not be obliged to depon again.

No 30.

THE LORDS ordained her to depon, seeing she might have intromitted after, and more might have come to her knowledge of the worth of the goods, or a greater price gotten therefor.

*Stair, v. I. p. 347.*

1667. July 16.

KER against KER.

THE LORDS found, that an executor, notwithstanding of the oath given upon the inventory the time of the confirmation, may be urged to declare upon oath, whether, since the confirmation, it is come to his knowledge, that some goods and debts were omitted which he did not know the time of the confirmation, and whether he has gotten greater prices than are contained in the inventory.

No 31.

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 14. Dirleton, No 97. p. 39.*

\*.\* Stair's report of this case is No 63. p. 3874. *voce* EXECUTOR.

1673. July 29.

MOWAT against The EARL of SOUTHESK.

THE EARL of Southesk having obtained a decret against James Mowat, for payment of a sum which Mowat was obliged to advance to the Earl in France, Mowat *alleged*, That he had advanced the same to Mr James Maitland, then the Earl's servant, and keeper of his money; Mr James Maitland being examined upon oath, remembered not of the same; whereupon Mowat was decerned. He now gives in a bill of suspension, and *alleges*, That he had then produced in process a count written by Maitland's own hand, and a letter relative thereto, bearing the payment of this sum, which was not produced or

No 32.

In a process, the defender had condescended on payment by a servant, who deponed *non memini*. Afterwards, a written acknowledgment of the

No 32.  
servant was  
found.  
He was or-  
dered to be  
re-examined.

shown to Maitland when he gave his oath by inadvertence in the close of the last session; therefore craving that Maitland might be examined upon the sight of the count written by his own hand, in respect that he had now seen the account, and was thereby brought to remembrance. The Earl opposed his decret *in foro*, and that Maitland had deponed, and that it was competent to Mowat to have craved his re-examination before sentence.

THE LORDS ordained the matter to be discuss upon the bill, and ordained Maitland yet to be re-examined upon the sight of the account, which would not clash with his former oath, being only as to his remembrance. Likeas, they found that Maitland never compeared to depone, but gave in his oath in writ, without inspection of the account.

*Fol. Dic. v. 2. p. 14. Stair, v. 2. p. 224.*

No 33.

1677. June 8.

CAMPBELL against TAIT.

THE libel being referred to the defender's oath, and he having declared, upon a general interrogatory, that he was not owing the sum acclaimed, it was urged, the time of the advising of the oath, That the defender should declare, whether or not he had gotten a parcel of lint, and what way he had paid the price of the same.—THE LORDS found, that he should not be urged to declare upon that interrogatory, in respect it was not desired he should be interrogated upon the same when he did declare; and having denied that he was any ways debtor, he would be involved in perjury, if, upon a special interrogatory, he should acknowledge that he was debtor upon the account therein mentioned.

Advocates, Stewart & Swinton.

Clerk, Mr Thomas Hay.

*Fol. Dic. v. 2. p. 14. Dirleton, No 453. p. 220.*

1678. November 30.

HUSBAND against BLAIR.

No 34.  
An oath hav-  
ing been tak-  
en in general  
terms, the  
party was not  
allowed to be  
re-examined  
on special  
interroga-  
tories.

IN a competition betwixt Blair of Ardblair and Husband, there being two bonds of the same sum granted by Ardblair within some few months of each other, Husband *alleged*, That both bonds were for one cause, and the one being satisfied, satisfied both, which the LORDS would not sustain upon presumption, that the bonds were for one sum, and near one time; and therefore Husband has referred the verity thereof to Ardblair's oath, who deponed negative; and thereafter Husband desired him to be re-examined, What was the cause of these bonds? It was *answered*, That if that question had been put to him before he deponed generally negative, it had been pertinent, but now it is not competent; for thereby the deponent might be brought to prevaricate and

Special inter-  
rogatories  
ought to be  
put first;  
then general.