

No. 107. impossible in such cases where divers persons do intromit, to distinguish and prove their intromissions.

The Lords found the defenders liable conjunctly.

*Dirleton, No. 137. p. 57.*

No. 108.

1687. *January.* CAPTAIN STRACHAN *against* MORISON.

THOUGH spuilziers pursued in three years are liable *in solidum*, yet, after three years, being restricted to intromission, and a promiscuous intromission of many being proved, they are all decerned equally *pro rata*, unless the defender or pursuer prove that such a one's intromission was less or more than others.

*Fol. Dic. v. 2. p. 386. Harcarse, (SPUILZIE.) No. 863. p. 245.*

No. 109.

1704. *November 18.* LORD SALTON *against* CLUB.

IN a question whether those accomplices who had assisted a tenant to carry his goods and corns off the ground to the prejudice of the master's hypothec, should be liable *in solidum*, or only *pro rata* for the damage, where no violence was used in the away taking; the Lords considering the intromission to be unwarrantable, and that, though they were not sharers in the benefit, yet that it was a delinquency *in suo genere mali exempli*, and, if allowed, would encourage tenants to help their neighbours in defrauding their masters, by clandestinely conveying their goods and corns off the ground; therefore, in this circumstantiate case, their Lordships found all the assistants liable *in solidum*.

*Fol. Dic. v. 2. p. 386.*

\* \* This case is No. 13. p. 1821. *voce BREVI MANU.*

No. 110.

An agent for a lady having caused antedate an execution of an edict for confirming her executrix, and she having made use of it, the Lords

1716. *June 13.* SUTHERLAND of Kinminity, *against* WISEMAN and Others.

THE late Sutherland of Kinminity, the pursuer's grandfather, having deceased while the pursuer was abroad, the Lady Artamfoord, the defunct's sister, intending to raise an edict before the Commissary of Murray for confirming her executrix to her brother, Wiseman the defender, in the interim, acting as commissary-depute, inventories the goods and papers, seals up the cabinets, &c. and delivers fifty guineas to Crimond the lady's son, and takes his bond for the same, payable to whomsoever should be found to have best right to the executry. But the pursuer being on the road homeward to Scotland, the edict is raised and executed only