

ALLEGED for the pursuer.—The defender ought to depone when these orders from the Earl of Sutherland were drawn, to whom payable, for what cause, and to what extent; that the Lords may judge if the same be relevant to assoilyie or not; for he is not to be judge of the relevancy of his own payment. *Stair, Lib. 3. Tit. 1. § 41.* And these orders might perhaps have been for payment of debts which the defender himself was bound to clear; or the date of the orders might have been before, and the payment after the arrestment, which would not be relevant to assoilyie the defender.

ANSWERED for the defender.—Though a debtor by writ called in a furthcoming should be special, yet it sufficeth that the defender (whose intromission is probable only by his own oath,) depone, without descending to particulars, That he paid all before the arrestment; which implies *naturalem prestationem*: albeit extrinsic qualities, inferring a ground of compensation, or payment in goods, depone upon, must be proved *aliunde*. *June 26, 1675, Gilchrist contra Murray, observed by Dirltoun.*

The Lords ordained the defender to depone, specially, what payments were made by him to his father, and by his order, to the best of his memory.

*Page 575.*

1712. *February 21.* SUSANNA STUART, Relict of Captain MENZIES, *against* MENZIES of Culdairs.

The Lords found no process upon a summons of aliment, because it did not contain two diets, and yet required a term to prove.

*Page 592.*

1712. *February 22.* PATRICK HOUSTOUN, Advocate, *against* ROBERT MUSHET, his late Servant.

ROBERT MUSHET being found guilty of fraudulently abstracting his master's papers, and propaling them to his prejudice; The Lords pronounced against him the same sentence as was pronounced by act of Sederunt, July 20, 1675, *against* Hugh Riddel; and further declared him incapable of any service about the College of Justice.

*Page 593.*