

in law be holden to answer to such a libel, or to produce for founding of any either action or execution to the creditor,—the LORDS sustained this action, in respect that the pursuer had a probable and excusable ignorance of his debtor's writs; as an apparent heir might call for production of his predecessor's writs, that he might advise, if he could enter heir or not to his predecessor, *see* No 47. p. 2804.

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 281. Durie, p. 830.

No 9.
belonging to him in her custody, tho' no particular writings were condescended on.

1717. January 8. WILSON of Backie *against* MR JOHN ARNOT.

THERE being a declarator of trust raised at the instance of the said pursuer against Mr Arnot, as having disposed his estate to him, without a back-bond, or any onerous cause, but only for relieving the estate of some incumbrances, which Arnot was to transact to the best advantage; among other points in this process for expiscating the trust, the LORDS ordained the defender to give in a condescendence of the *res gesta* and onerous cause of the disposition, and how the same was performed: The defender accordingly gives in his condescendence, upon which the pursuer raises the reduction upon fraud, and repeats the same in this process; and the defender's production, mentioned in his condescendence, being only decreets of adjudication and the like, the pursuer insisted that the grounds and warrants thereof should be produced.

Answered for the defender; That he had produced sufficient to instruct his condescendence, and to redargue the facts as advanced by the pursuer, so as to exclude that declarator of trust which is the present process; and all the grounds of the said decret being narrated therein, so far as to discover the nature as well as the extent of them, there was no necessity for any further production: Nevertheless,

THE LORDS ordained the defender to exhibit and produce upon oath, in the clerk's hands, the whole writs mentioned in his condescendence, and to which he had right, with the grounds and instructions thereof, which he has or had in his hands, at the time of the commencement of this process, and since.

Act. *Robert Dundas.*

Alt. *Grabame et M^r Kenzie.*

Clerk, *Robertson.*

Bruce, v. 2. No 47. p. 63.

No 10.
A party having produced decrees, to exclude a declarator of trust, was found obliged likewise to exhibit the grounds and warrants.

1735. June 26.

FRANCIS SCOT *against* LORD NAPIER.

IN a reduction and improbation of certain land rights, the defender produced charter and sasine, sufficient, with forty years possession, to exclude the pur-

No 11.