

petition. The lawyers withdrew this last petition, in order to give in a new one without the preamble concerning our former judgment.

No. 2. 1749, Dec. 7. DUGUID *against* MACOMBIE.

THE question was, Whether a person denounced Rebel to the horn, even for a criminal cause, when called as a defender, had *persona standi in judicio*, and might propone defences? Dun and Easdale gave their opinion that he was not debarred from pleading any defences; but the rest unanimously agreed he was debarred; but the President gave no opinion. But January he gave it strongly, and we refused a reclaiming bill without answers.

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PERSONAL AND REAL.

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No. 1. 1738, Jan. 10. CREDITORS OF SMITH *against* HIS BROTHERS AND SISTERS.

DELAYED (12th July 1737) till we see the decision in the case of Pittodrie.

The Lords found by the conception of the clause that it was a real burden, (albeit expressed with the burden of the payment) and found it effectual, though not inserted in the sasine otherwise than by a reference. Arniston was much against the first part, but it carried by a great majority, 26th July.—10th January 1738, The Lords Adhered.

No. 2. 1739, June 20. CHILDREN OF SIR DAVID MURRAY, &c. *against* THE EARL OF MARCH, &c.

I WAS in the Outer-House when this cause was advised, and I am told the Lords pretty unanimously found these childrens provisions were not real burdens. I am also told the grounds were two; first, that the disposition was not with the burden of these debts, but with the burden of payment of debts; and this was Arniston's opinion; but the majority were not of that opinion. The second was, that this list of debts was not inserted *in gremio* of the disposition, nor registered in the register of sasiines, but only in the books of Session. This deserves to be well considered.

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PERSONAL AND TRANSMISSIBLE.

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No. 1. 1746, July 17. M'FARLANE *against* GRAHAM of Killearn.

A PROCESS was brought against the last Killearn for wrongously turning the pursuer out of possession of his tack, pointed his corns, charging and arresting for more than was due;