

INDEFINITE PAYMENT.

1565. January 6. A FRENCHMAN against FLEMING.

No 1.

IN an action, moved by a Frenchman against Mr Thomas Fleming, as cautioner for umquhile Lord Fleming, for the sum of ———, which the said Mr Thomas obliged him to pay, or cause the said Lord pay the same, it was answered, that the said umquhile Lord Fleming had paid to the said Frenchman. It was replied, That the said Lord was owing to him as much by an obligation of an older date, and the said payment was to be understood for the oldest debt; and was answered, that the debt, wherefore he had found caution, was more hard and painful, and therefore of the law it is to be interpreted, that the debtor would first have relieved the same, L. 89. § 2. D. De solutionibus. THE LORDS admitted the reply to probation, notwithstanding the said law, which had not been received in this realm.

Fol. Dic. v. 1. p. 460. Mailland, MS. p. 204.

1592. December 14. JAMES HARVIE against The EARL of MURRAY.

No 2.

IN the action pursued by James Harvie, advocate, against the Earl of Murray, it was found, by the Lords interlocutor, that a party who is obliged *pluribus nominibus* for sundry debts and sums of money, if he makes payment of a sum of silver *indefinite* to his creditors, he may ascribe it to the payment of any of the debts the debtor pleases, *et eo casu debitoris est optio in ejus potissimum obligationis liberationem imputari velit solutionem.*

Fol. Dic. v. 1. p. 460. Haddington, MS. No 54.

1680. February 13. M^RREITH against CAMPBELL.

SAMUEL M^RREITH pursues Donald Campbell, as cautioner for Hector M^RNeil, in a sum of L. 300 Sterling, who *alleged* absolvitor, because this sum being due

No 3.
In indefinite
payment the
brocard *electio*