

No 369.

1709. *January 4.* KER *against* PRIMROSE.

THE LORDS sustained a decree of adjudication pronounced by a Sheriff upon a renunciation to be heir.

Fol. Dic. v. 1. p. 510. Forbes.

* * This case is No 8. p. 46. *voce* ADJUDICATION.

1710. *June 23.*

No 370,

JANET DALRYMPLE, and SKENE of Hallyards, *against* DANIEL JOHNSTON.

IN an advocacy at the instance of Janet Dalrymple against Daniel Johnston, an arrestment being laid on by virtue of the Sheriff's precept in a person's hand within his jurisdiction, and that person having changed his domicile, the bailies of the place of his present residence were found competent to judge in an action of furthcoming upon the arrestment, albeit that was alleged to be contrary to the decision, Smith *contra* Miller, March 8. 1634. No 199. p. 7484. in respect the Lords were not unanimous in that practick; and my Lord Stair, *Instit. Lib. 3. tit. 1. § 24.* clears, that one inferior judge may sustain process of furthcoming, upon an arrestment laid on by warrant of another.

Forbes, p. 415.

1711. *January 24.*Mr THOMAS BINNING in Dalmarnock *against* CHRISTIAN COOK, and Mr HUGH ARNOT, her Husband.

No 371.

A sheriff-clerk competent to judge in absence of the sheriff-depute by virtue of a commission from the sheriff-principal; and his clerk-depute to officiate as clerk.

CHRISTIAN COOK and her Husband suspended a decret pronounced against them by Mr James Leslie, as sheriff-depute of Fife, at the instance of Mr Thomas Binning, upon this ground, That it was null, because Mr James Leslie, the pronouncer, was principal sheriff-clerk; and it was inconsistent and irregular for one man to be both judge and clerk, two distinct offices that should be independent of, and mutual checks to one another.

Replied for the charger, Though it be incompatible for the same person to sit both as judge and clerk *in eodem judicio*, why may not the principal sheriff-clerk, (as it was in this case) sit in absence of the sheriff-depute, by virtue of a commission from the sheriff-principal, or from his depute, and the clerk-depute officiate as clerk, which is the general practice in all inferior courts, the principal clerk being most capable to judge in absence of the judge-depute? The cause of a principal sheriff, steward, or bailie, may be judged by