

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.

PERSONAL AND REAL.

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.

PERSONAL AND TRANSMISSIBLE.

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;

and divers other acts of oppression ; and when it was enrolled, one of the parties, without any debate, moved the Ordinary to make avizandum, which he did ; and next vacance the defender died, and the pursuer transferred the process against his heir ; and an act before answer being pronounced, a proof came this day to be advised, and though the proof was far from being clear, but such as we thought would have been concluded against the last Killearn, if alive, yet because there had been no litiscontestation, in his life, we found that the process did not lie against his heir.

No. 2. 1751, Jan. 22. HEPBURN *against* M'LAUHLAN.

See Note of No. 23, *voce* PACTUM ILLICITUM.

PERSONAL OBJECTION.

No. 1. 1734, June 25. GRAY and CORBET *against* GRAY.

THE Lords (6th February 1734) found the suspender cannot recur to his reasons of suspension. 25th June, The Lords adhered. *Vide* DIRLETON'S DECISIONS, No. 126.

No. 2. 1735, Feb. 6. ROGERS *against* MELVILL.

See Note of No. 3. *voce* FRAUD.

PLANTING AND INCLOSING.

No. 1. 1734, June 7. FERGUSON *against* MACNIDDER.

UPON the act 1698 for preserving planting, found unanimously relevant against a tenant, that trees planted about his yard were cut, to infer the penalties in the said act, without libelling that they were cut by the tenant, his wife, bairns, servants, or others in his family. —N. B. Those plantings were not inclosed. We found that libel proven as to one tree above 20 years old. As to the natural wood in the glen found that the act extends not to it. The Lords had different reasons ; some that it was scroggie wood not fit for sale, commonly pastured ; others *inter quos ego*, because it was natural wood (not planted) not inclosed.

No. 2. 1738, Feb. 28. ORD *against* WRIGHT.

MR ORD having pursued Wright for the half of the charges of a march dike, it was objected that this process was not competent, since most part if not the whole dike was