

1611. July 6.

DICKSON *against* DAWICK.

No 57.

HE who has the gift of ward-marriage and non-entries, pursuing for declarator of the non-entries of diverse years after the ward, will not be elided by allegation that a gift of non-entries of that kind lasts but three terms after the ward, because that defence is not competent to the defender, but to the King's treasurer, or to another donatar.

*Fol. Dic. v. 1. p. 522. Haddington, MS. No 2263.*

1612. February 24.

WEDDERBURN *against* NISBET.

No 58.

A PURCHASER of the superiority of feu-lands, has not access to declare an irritancy *ob non solutum canonem*, incurred during the time the right was in his author, because such irritancy does not *ipso jure* annul the feu, giving only a personal privilege to the superior, which he may use or not at his pleasure.

*Fol. Dic. v. 1. p. 522. Haddington, MS.*

\* \* \* This case is No 7. p. 7181. *voce* IRRITANCY.

1620. March 8.

A. *against* B.

AN infestment of annualrent found null *ope exceptionis*, because granted by the Laird of Restalrig and not confirmed, in respect he was forfeit, albeit the party opposer had not right by the forfeiture.

No 59.

*Fol. Dic. v. 1. p. 522. Kerse, MS. fol. 125.*

1623. July 20.

CALDWALL *against* DURIE.

No 60.

ANDREW CALDWALL, as assignee constituted be ————— to certain cattle and sheep, and to the action of spuilziation thereof to be competent against Mr James Durie alleged spuilzier, pursues Mr James for spuilzie. *Alleged* for the defender, That the pursuer's title, quhilk is the assignation, is null, because made *stante rebellione* in prejudice of a creditor. *Answered*, The proponer is not the creditor at whose instance the horning was used, and so not competent. *Duplied*, Sufficient that he is a creditor, for so the assignation is in his prejudice, and in defraud of execution, whilk he might have craved against these goods.

Find the assignation null, the defender shewing where he was distressed for the pursuer's cedent's debts.

*Fol. Dic. v. 1. p. 523. Nicolson, MS. No 113. p. 77.*

In a competition between an assignee and the cedent's creditor, the Lords found that the creditor might object to the assignation as granted *stante rebellione*, tho' he was not the creditor at whose instance the horning was raised.