

1722. December 20. DUKE OF ARGYLE against M'QUORQUADALE.

No 79.

It being *objected* against an adjudication, That though it was deduced upon a debt which came through several hands to the pursuer, yet the whole progress was not produced in the process of adjudication, so that, for want of several midcouplets, it could not appear the pursuer had any right to the debt; the LORDS, in respect the whole progress was now produced, refused to reduce the adjudication *in toto*; but restricted the same to a security for the principal annualrents and necessary expenses. See APPENDIX.

Fol. Dic. v. 2. p. 181.

SECT. III.

Steps of Procedure necessary in all Processes.

1633. February 6. HUME against HUME.

In a decret obtained by James Hume against Christian Hume, as intromissatrix with her husband's goods, for her husband's debts, before the Commissary of Lauder, and given *parte non comparante*, and upon contumacy, for not comparing to give her oath, the summons being referred thereto, and she summoned to that effect, was reduced upon this reason, viz. because she was not summoned by a messenger, nor yet by the ordinary officer of Court, but by a common boy; and also, because there were diverse defences given in by the defender's procurators for her, which were neither repelled nor admitted, and so not discussed in process, nor no minute therein bearing litiscontestation to have been made, as ought to have been; for albeit the defences were noways relevant, but in effect a denial of the libel, and that the libel was referred to the party's oath of verity, and that she was summoned to that effect, which the obtainer of the sentence alleged to be in effect litiscontestation, and that the defence needed to be reported in the process to be repelled, being only the denying of the libel in substance; yet the LORDS found, That the Judge ought to have given his answer formally to them, and should have repelled them, and admitted the libel by his signature, and therefore, that not being done, the sentence was reduced.

No 80.
The judge ought to pronounce a distinct interlocutor upon the relevancy of the libel and defences.

Act. Craig.

Alt. ———.

Clerk, Gibson.

Fol. Dic. v. 2. p. 182. Durie, p. 669.