1663. *February* 10. CRAWFORD *against* DEBTORS of THOMAS INGLIS.

No 156.

THOMAS CRAWFORD, as executor-creditor to umquhile Robert Inglis, pursues some of his debtors. It was *alleged*, No process; because Thomas, as factor for Robert Inglis, had pursued the same party, for the same cause, before the Commissaries of Edinburgh, wherein litiscontestation was made; and so now it cannot be pursued elsewhere, but the process ought to be transferred and insisted in. The pursuer *answered*, That he pursued then as factor, but now as executor-creditor, who did not consider what diligence defuncts did; but might insist therein, or not; 2*dly*, This being a dilator, is not instantly verified.

THE LORDS found the defence relevant, but would not find it competent, unless instantly verified; and because it behoved to be instructed by an act extracted.

Fol. Dic. v. 2. *p.* 188. *Stair, v.* 1. *p.* 176.

1672. *February* 6. MURRAY *against* MURRAY.

No 157.

A DEED conveying lands in Ireland being challenged in a reduction and improbation as forged, the defence was, *res judicata*, the defender having been assoilzied in a like process intented against him by the pursuer before the Irish judges. *Answered*, This is a dilatory defence, which must be instantly instructed. *Replied*, The defender is willing to propone it as a peremptory, so as, if he succumbs, he shall have no terms to produce. THE LORDS, notwithstanding, refused to sustain the *res judicata in initio litis*, to bar production, unless instantly instructed, but reserved the same till after production.

Fol. Dic. v. 2. *p.* 188. *Stair.*

*** This case is No 18. p. 4799, *voce* FORUM COMPETENS.

No 158.

1676. *February* 24. KELLO *against* KINNEIR.

ALISON KELLO having pursued Alexander Kinneir for reduction of several rights of his fathers, he *alleged*, *Minor non tenetur placitare super hæreditate paterna*. It was *answered*, That this defence was but dilatory, and ought to be instantly verified.

THE LORDS repelled the allegeance, and found that a term ought to be granted to prove the defence.

Fol. Dic. v. 2. *p.* 189. *Stair, v.* 1. *p.* 422.