

in an action to make forthcoming. But that is absolutely necessary in a forthcoming, yet I think it not so here,

Advocates' MS. No. 356, folio 146.

1672. *July 2.*

ANENT PROCURATORIES OF RESIGNATION.

Queritur, A father, by contract of marriage, disposes lands to his son, and the heirs of his body, and grants a procuratory of resignation, for infesting his son and the heirs therein: the son dies, and never any resignation made: he leaves a child behind him, which child is served heir to his father: the question is whether (the goodsire, granter of the procuratory of resignation, being still on life,) resignation may not be summarily made in favours of that child, as well as if by name and surname he had been mentioned in the procuratory; seeing by an inquest of sworn men, he is cognosced and declared to be the son and heir of that man to whom and whose heirs the procuratory was granted.

Sir George Lockhart and sundry were of opinion, there needed no action, but that the service was equivalent to an assignation to the procuratory, in which case resignation might be made summarily.

Advocates' MS. No. 357, folio 146.

1672. *July 5.*

JACOB JAMART *against* HARRY JOSSIE.

Jacob Jamart pursuing Harry Jossie, for sundry sums he had paid for him as cautioner: It was alleged for the defender, that by the police and practise of Bordeaux,* the major part of one's creditors (which goes either by the sums or the number,) having accepted a cession from their debtor of all his goods, they give him a supercedere and *rescriptum moratorium*; and what they do in this sort binds all the rest, and they are obliged to stand to it, and the goods are divided amongst them all *pro rata*; that conform to this police, he had made a cession; and therefore craved, that according to the custom of Bordeaux, Jamart might make a proportional part of whatever he shall recover by virtue of this sentence forthcoming to his other creditors in Bordeaux, and that the Lords would divide it amongst them. The Lords would not regard the customs of another kingdom, nor decide conform thereto, (seeing they in the same manner rejected ours, and by acts of parliament we are ordained expressly to be governed by the king's laws, and not by the statutes and customs of any other realm;) and thought the desire of the defender was as unreasonable as if one should say, if a Frenchman had got a bond of a Scotsman, past twenty-one years, but within twenty-five, and did pur-

* And this was also the common law, *l. 7. in fine, l. 8. 9. and 10. D. de Pactis. Vide Schotanium, ad d. T. de Pactis*, who shows the customs of Germany and Holland have receded from this now. *Vide omnino l. ultimam C. Qui bonis cedere possunt. Contrarium definivit Senatus Burdegalensis ejus quod hic allegatur; ut videre licet apud Autumnum, in Censura sua Gallica ad l. 8. D. de Pactis.*