

No. 118. is. This decret was given, the defenders being absent; for after they had compeared, and proponed some defences, viz. dilatories, that the reason of the summons was eiked, altered, and mended, in substantial points, in respect whereof the procurators for the defenders, viz. the King's Advocate and Stuart, alleged, that they ought not to answer, until they were of new summoned; and which allegeance was repelled, and a short day, viz. ten days, thereafter, was assigned to them to answer to the summons, and reason as it was mended; thereafter they passed from their compearance, and the sentence was given, the defenders not compearing.

Act. *Nicolson & Craig.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 430. Durie, p. 706.

1695. *December 31.* INNES *against* INNES.

No. 119.

In a competition betwixt an heir-male and an heir of line, an old tailzie being produced by the former, bearing, That the estate had always been conveyed to heirs-male, therefore the granter obliges himself to his father to provide the same, in like manner, to his heirs-male, &c. the Lords found this tailzie onerous, and so not revocable.

Fol. Dic. v. 2. p. 430. Fountainhall.

. This case is No. 386. p. 11212. *voce* PRESCRIPTION.

1701. *December 9.*

BURNET of Monboddo *against* The HEIRS of LINE of SIR ALEXANDER BURNET of Craigmyle.

No. 120.

A person having executed a tailzie, and thereafter a revocation of it, binding himself to cancel the tailzie, it was found, that it was revoked by the posterior deed, altho' he had not cancelled it.

Sir Alexander Burnet of Craigmyle signed a bond of tailzie, in the year 1686, in favours of himself, and the heirs-male of his own body; which failing, to Thomas Burnet, his uncle, and the heirs-male of his body; which failing, to James Burnet of Alagaiven, also his uncle; and failing of him, to Robert Burnet, his third uncle; and the heirs-male of their bodies, in their order; which all failing, to his own nearest heirs-male whatsoever.

The said Sir Alexander did thereafter, in the year 1688, sign a declaration and obligation, at Edinburgh, narrating certain onerous causes and considerations known to himself, and which, for the respect he bore to his uncle under-written, as being his own so near a relation, and, lest the same should thereafter be reputed a reflection upon him or his family, he thought not fit to express, or make known to the world; therefore he altered, revoked, rescinded, and annulled a disposition or bond of tailzie formerly granted by him in favours of Thomas Burnet, his uncle, his sons, and their heirs-male, or any one or other of them, of the lands therein