

- No 42. LORDS repelled the allegiance, and found it *jus tertii* to the wadsetter to object prescription against the pursuer, and sustained process; though it was contended the prescription took off the *jus agendi* on the apprising, as much as if it had been renounced, prescription being a presumptive legal renunciation of the right.

*Fol. Dic. v. 1. p. 519. Fountainball, v. 2. p. 238.*

1708. June 19. RELICT of A, *against* Her CHILDREN.

- No 43. IN a process at the instance of a defunct's relict and children against the executors, these last being confirmed, they craved deduction for the moveable heirship, as the best of each species of the plenishing, which the heir would have right to, though here he had not claimed it.—THE LORDS found that the whole was to be accounted for, but ordained the receiver to find caution to warrant them against the heir, when he appeared.

*Fol. Dic. v. 1. p. 518. Fountainball.*

\* \* \* This case is No 131. p. 5927. *voce* HUSBAND and WIFE.

1708. June 30.

JOHN RULE, Merchant in Dumfries, *against* ANDREW PURDIE, Merchant in Edinburgh.

- No 44. IN a removing from a tenement within Dumfries, pursued at the instance of John Rule, infest therein as heir to John Rule, chirurgion there, his father, against the tenants; compearance was made for Andrew Purdie, who having adjudged the tenement from the pursuer's father's author, and standing infest therein, objected against the pursuer's warning, that it was null for being executed by one James Mackno, a borough officer that was blind, and so not capable to execute diligence, seeing a blind man could easily be imposed upon, and mistake one man, or one house or door, for another.—THE LORDS found it to be *jus tertii* to Andrew Purdie, to object against the formality of the warning, in respect he was neither a possessor, nor called in the removing, but only a pretended competing creditor, who had no further interest than to get himself preferred.

*Fol. Dic. v. 1. p. 520. Forbes, p. 256.*

\* \* \* Fountainhall reports this case.

JOHN RULE, standing infest in some tenements in Dumfries, upon an adjudication led by his father, pursues a removing against the tenants. Andrew