No. 34. diate intromission against the debtors, the preferable debts in the first gift being once satisfied; and even against the first donatar, if he had extended his intromissions beyond his title: But no action could be competent against the donatar himself, and far less now against his representatives, to compel them to continue their intromission beyond their own interest. Answered to the *second*, Since there is no title, there is no presumption that the donatar or his representatives would continue their intromission farther than in satisfaction of their gift: The creditors then had no reason to trust to this; and if they neglected to take out a second gift, the pursuers have their own argument to retort against them, That they alone ought to suffer thereby.

"The Lords found the representatives not liable in diligence."

Rem. Dec. v. 1. p. 91.

1729. *February.* OGILVIE *against* LYON.

No. 35.

A debt was assigned in trust, in order to lead an adjudication. The adjudication was led upon the trust-debt, and several others belonging to the trustee; but there being many preferable diligences, the trustee bought in one of them, and by virtue thereof got into possession. In a process at the cedent's instance against his trustee, to account for his intromissions, it was found, That the apprising purchased in by the trustee could not expire in his person in prejudice of the apprising led at his instance as trustee for the pursuer, but that the same must be understood as purchased in for their common behoof, the pursuer always being liable for his proportion of the money paid for the purchase.—See APPENDIX.

Fol. Dic. v. 2. p. 477.

1737. *June* 21.

BEATON of Kilconquhar *against* M'KENZIE of Fraserdale.

No. 36.

One purchased an estate, and took a conveyance to his author's disposition with procuratory and precept.

While a prisoner, in consequence of being engaged in the Rebellion 1715, his friends, in order to protect his estate, infeft his author.

Having returned home unattainted, he contracted debts, and conveyed to certain creditors the precept in security, ignorant that it had been exhausted. He died bankrupt; and these creditors applied to his author, from whom they obtained infeftment.

Other creditors brought a reduction, on the act 1696, of this act of the author, as a trustee who had alienated after his constituent had become bankrupt. The defence was, that the author was no trustee. The conveyance did not denude him of his personal right. He might have infeft himself, and made a second convey-