

vassal *titulo oneroso*, as in other heritable infeftments and dispositions made by superiors to vassals *titulo lucrativo*, or at least for service without any sums of money debursed; and also, it was notour that the pursuer was hindered to enter heir to her father *legitimo impedimento, quia objecta fuit illi quaestio natalium*, by Mr Henry Mackalzean, before the commissaries, and she summoned to hear herself declared bastard; in respect whereof her lying out could not prejudice her; but now, after she is declared heir, *debet recuperare fructus hereditatis jacentis*. The Lords found, that, during the time of the non-entry, the annual-rents belonged to the superior.

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1583. November.

ONE being pursued to flit and remove from a mill and dean lands: Alleged, That she was heritably infeft in the same by the pursuer's predecessor. Replied, That, since that infeftment and sasine following thereupon, she had taken tack and assedation of the same; and so, having acknowledged herself once to be tackswoman, she behoved to remove after the ish of the said tack. Duplied, That her heritable right and infeftment could not be prejudged by the tack, and that, in a removing, the exception of an heritable right and sasine before the warning, will ever stop the removing. Triplied, That, by the common law, *Si quis, conductionis titulo agrum vel aliam quamcunque rem accepit, possessionem prius restituere debet, et tum de proprietate litigare*. C. Locati. The Lords decerned her to flit and remove, without prejudice to her heritable right *in iudicio petitorio*.

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1583. November. SCOTT of SPENCERFEILD *against* The LAIRD of BARNBOUGALL.

AN advocation being craved by Scott of Spencerfeild against the Laird of Barnbougall, his superior, who had summoned him before his own bailie, to hear and see his land decerned in non-entry, some of the Lords were of opinion that it agreed with the law and daily practick, that the superior might be judge, and had ordinary jurisdiction between him and his vassal, (except the question resulted upon heritable right;) for, *sicuti habebat jurisdictionem voluntariam* in the receiving and entering of his vassal, *ita habebat jurisdictionem contentiosam*, if the vassal paid not his duties and homages. Others thought it no ways reasonable that he should be judge *ubi ageretur de suo commodo*; and so the bill was granted.

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