

called as executor, or intromittor with his father's goods; and for proving thereof, a decret being produced, at the same pursuer's instance, against this same defender, for another debt of his father's, wherein he was convened *iisdem nominibus*: which, being referred to his oath in that process, and he holden as confessed for not compearance, the decret of certification, upon contumacy in that process, was not found to prove in this process; but that he ought to prove otherwise, albeit it was given betwixt thir same parties.

Gibson, *Clerk*. *Vid.* 22d March 1628, Farquhar *against* Campbell, and the cases there cited; 26th January 1631, L. Gadgirth *against* L. Afflect.

Page 468.

1629. *December 11.* The SHERIFF of GALLOWAY *against* The LAIRD of CRAGCAFFIE.

THE sheriff pursuing his own tacksman, to find caution to pay the tack-duty, or else to remove; and, in this process, Cragcaffie compearing, who had comprised the lands, and was infest, or done diligence, which was equivalent; and alleging thereby, the lands to be his, and that the pursuer could not be entered to the land, though the alleged tacksman should not find caution, the pursuer's self having no right to the land, and nothing being produced for him: for his setting of a tack of that which he had no right to, could not furnish him any interest to the land, against him who had right, seeing he was now a party, and the cause ought not to be considered as betwixt the setter and the tacksman only:—The allegiance was repelled: and, but production of any right to the land, in the pursuer's person, the action was sustained against his own tacksman; albeit the allegiance was not proponed for him, but for another clad with a right.

*Act.* M'Gill. *Alt.* Neilson. *Scot, Clerk.* *Vid.* 18th June 1629, Dumbar *against* Turner.

Page 473.

1630. *January 19.* BRUCE *against* WARDLAW,

MENTIONED 14th January. The question being betwixt two parties, which of them had right to hold courts within the lands of Torrie, which lands are holden of the Bishop of St Andrews; which right was claimed by Bruce as bailie-depute to the Lo. Lindsay, who had an heritable right and sasine thereof from the bishop, to whom he was heritable bailie within his regality of his lands in Fife; and the other claimed the same as infest by the bishop in the lands of Torrie *cum curiis*; and alleged, that the Lord Lindsay's sasine was null, being appointed by the bishop's precept insert therein, to be taken at the castle of St Andrews, for all the lands within that bailiary, albeit the lands lie far discontinuous; and that the bishop, nor no subject, can make an union but by the king's confirmation. This allegiance was repelled, and the sasine sustained; seeing the Lords found, that this was not an union of lands, which indeed no