

no warrant from his master to take it. Fairholme, on the sight of this receipt bids him quickly return it to the Colonel, and take another receipt, as of borrowed money, which the Colonel refused. When this came to be debated, it was found to be an acceptance of the bill, and Fairholme was decerned to pay the whole sum, because of the exuberant faith in bills of exchange.

Act. Sinclair.

Alt. Maxwell.

MS. folio 51.

1662 *November 12.* Lord BURGHIE *against* LAFODDIE in Fyffe.

IN a case betwixt thir parties, found that a base charter of kirk-lands clad with possession, but not confirmed till long after the possession, is preferable to a public infeftment confirmed before; and that in respect the base infeftment was clad with possession long before the other's confirmation, and that but interruption: and that the subsequent confirmation of the base right, though posterior to the other's public confirmation, was drawn back to the date of the base seasine clad with possession, as said is.

Act. Cunyghame. *Alt.* Nisbet.

MS. folio 51.

1662. *November 15.* THOMAS NICOLSONE *against* GEORGE BALFOUR of Balbirnie.

MUTUAL molestations being pursued by Mr. Thomas Nicolsone and George Balfour of Balbirnie of either of their possessions of the Mure of Bigtie, adjoining to both their lands: Mr. Thomas being infest in Pittenthass *cum pastura et libero introitu et exitu*; the other being infest in Markincsh *cum communi pastura in mora de Bughtie*:

The Lords found Mr. Thomas his infestment, with forty years possession in the said mure by pasturing, relevant; but because Balbirnie alleged he was *per expressum* infest in that mure, and had interrupted Mr. Thomas *via facti* from pasturing, &c. therefore they ordained Mr. Thomas to prove forty years possession before the alleged time of Balbirnie's interruption: and they inclined that if Balbirnie had raised a declarator of property, or right on his infestment, he might have debarred Mr. Thomas. But the judgment being possessory, they sustained Mr. Thomas his interest *cum communi pastura*, he proving *ut supra*.

Act. Nisbet and Balfour.

MS. folio 51.

1662. *November 15.* BURNET *against* _____.

IN this case, found that an executor pursuing for a debt owing to the defunct testator, who was neither merchant, venturer, nor factor: and the debtor alleging