

sidered, they assoilyie the defenders from spulyie as to the four kye and the quoyack, because they find them to have been orderly poided: *item*, Decern them to have done wrong,—yea, to have committed spulyie in their pretended poiding of the four oxen, the three followers, and the steir; and, therefore, ordain them to re-deliver the same to this pursuer as assignee, or else to content and pay to him L.18, as the price of each of the said oxen and steir, modified by the Lords; *item*, L.40 for violent or excrescent profits of the same: yet assoilyie from any violent profits of the three followers or steir, because they have none, &c.; and ordain letters of horning to pass upon the premises on fifteen days; because they found the alleged poiding thereof to be a direct spulyie. And this, notwithstanding, that, the time of litiscontestation, it was alleged by the defenders that they ought to be assoilyied from the said spulyie, because they poided the foresaid goods alleged spulyied, by virtue of a lawful sentence for a debt truly resting: for this having been found relevant, and so admitted to their probation, and a day assigned to that effect; whereon their procurator protested for an incident, and the pursuer's procurators in the contrary; the day being come, he succumbed in his probation for them, and the Lords found the exception of lawful poiding proponed by the defenders, proven allenarly as to the five kye; and, therefore, as to the oxen, &c. gave furth their decreet, *ut supra*.

*Act.* Mr. George Nicolson, Mr. Alexander Seaton. *Alt.* Mr. David Thoirs.

*Signet MS. No. 6, folio 2.*

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1663. *November 21.* THOMAS HEPBURNE *against* JO. KER, MATTHEW ROWAN, and OTHERS.

ROBERT HEPBURNE, merchant-burgess in Glasgow, had, the time of his de- cease, sundry tenements of lands lying within the said burgh pertaining to him. He dies. Thomas Hepburne, in Craigmuire, his brother's son, as apparent heir, intents a summons of exhibition of whatsoever writs, rights, evidents, contracts, dispositions, charters, infestments, precepts of seasine, heritable bonds, and other securities, granted to his said uncle or his authors, of the said lands and tenements, or his other rights whatsoever, that he may have inspection thereof, *ad deliberandum* whether he should enter heir or not to his said uncle; *item*, for delivery of the same to him as his own proper writs and evidents, to be used by him at his pleasure, if he find upon inspection thereof that it will be profitable to him to serve and retour himself heir to his uncle; and these unrased, uncanceled, &c. against Jo. Ker, Matthew Rowan, writer in Glasgow, and others, as havers, one or other of them in their hands, keeping, and custody, the said writs and evidents after called for, (which must be specially designed,) or, at the least, had them, and have now fraudfully put the same away. Their having thereof, he refers to their oath of verity; whereupon their procurator takes a day to produce them to give their oaths; which, the day being come, he accordingly did. And they upon their oath being examined anent the points of the summons, the Lords found their depositions not to prove the said summons libelled against them. Whereupon by decreet absolvitor, the Lords assoilyie them *simpliciter* from the articles of the summons,

and desire of the pursuer, craving them to bring with them the said writs called for, and then to hear themselves decerned to exhibit or deliver the same to him.

*Act.* Sir Thomas Wallace. *Att.* William Braidie. Hay. J. Boog.

*Signet MS. No. 7, folio 3.*

1663. *November 25.* GEORGE LEITH of Threefield, and OTHERS, *against* GEORGE DUMBAR of Elsleisk.

JO. DUMBAR of Moynes, and his son, by their bond, constitute themselves debtors to George Dumbar of Elsleisk, for causes therein contained, in the sum of 18,000 merks. Elsleisk understanding that there was as much addebted to Moynes, his debtor, by George Leith of Threefield, Erskin of Pittodrie, &c. he arrests in their hands; and then pursues them, the debtors, also for their interest, to make arrested goods furthcoming: so that he obtains decret against them, *in anno* 1662, ordaining them to make payment to him of the said sum, wherein they were addebted to Dumbar of Moynes. Of this decret, George Leith of Threefield, with the others decerned, raises a reduction; charging Dumbar of Elsleisk, the clerk of register, and his deputes, to exhibit and produce the said pretended decret, with the letters of horning, inhibition, arrestment, comprising, or others, if any were raised upon it, with their executions; with all the hail warrants and grounds of the said decret; to hear and see the same reduced: *1mo*, Because the same was given for null defence, and not compearance, they never having been warned personally thereto, by a messenger-at-arms, as behoved to be in all actions for making arrested goods furthcoming; neither was it ever publicly called, for it was put up only in the minute-book. *Dumbar of Elsleisk contra Dumbar of Moynes.* Patrick Fraser, upon suspicion, compears and gets it scored; and the summons being sent to him, and he finding nothing in it (as he suspected) against Leith of Threefield, or Pittodrie, (who are now pursuers,) he passes from it. In the mean time, a decret for not reproduction, is put upon the minute-book, thus only—*Dumbar of Askleisk against Dumbar of Moynes*; whereas, when it is called, they most surreptitiously take out decret against thir pursuers, who, according to the common order and practise, were *in tuto* not to compear: the actors, therefore, of such fraud, should be condignly punished, otherwise the lieges cannot be in security. *2do*, If they had been summoned, (as they were not,) then they would have alleged, as they do now, that no such decret could be given out against them; because, long before Elsleisk's arrestment made in their hands, they had paid the money they were owing to Moynes to Thomas Forbes of Auchortes, who had recovered decret against them to that effect, as his discharge produced by them attests; and so cannot be holden in double payment. *3tio*, No decret could be given against Pittodrie, nor Bracco, because there was never arrestment made in their hands, neither were they ever addebted to Moynes in any sums of money. But if there was any debt resting, or any arrestment made, then it was in their predecessors' times, who deceased long before this pretended decret; and some person should have been summoned to represent them, which was not done: