

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 practique, 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:

but albeit it had been done, yet they could not have been holden to have given their oaths upon any arrestment made in their predecessors' hands; that being *factum alienum*, and not consisting in their knowledge. *4to*, The said decret is null, because the said Dumbar of Moynes, who became debtor to Elisleisk, being dead, there is no right established in the person of his heir or representative, by obtaining decret of transferring against him; till which were done, no action nor decret for making arrested goods furthcoming, could be sustained. And, therefore, the pursuers crave to be reponed *in integrum* thereagainst, *cum omni causa*, sicklike as if the same had never been pronounced. For instructing of all which, the pursuers produce the extract of the said pretended decret which they crave to be reduced.

And the Lords, finding the desire of the summons relevant, ordain the defender's procurators to produce the writs called for; with certification that, if they failyie, the Lords will reduce the writs, and restore the pursuers thereagainst: and, for satisfying the production, assign them two several terms, whereupon two several acts lying in process were extracted. Both which terms being come, and the production not yet made,—the Lords, because of the said not production, reduced the whole writs called for, except the said decret produced by the pursuers allenary, in manner above written.

*Act. Pat. Fraser. Alt. James Abernethie.*

*Signet MS. No. 8. folio 3.*

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1663. *November 26.* ANDREW DAW and ROBERT WOOD *against* HENRY HOPE, EUPHAME MONYPENNIE, JOHN SMITH, and OTHERS.

ANDREW DAW, in Craill, *in anno* 1650, is infest upon disposition made to him by Sir James Lermonth of Balcomie, Knight, in the just two part of the lands of Sauchop, lying within the Sheriffdom of Fife; with the just and equal two part of the mansion or manor-place thereof, houses, biggings, yards, salt-pans, &c. lying within the parish of Craill. Upon disposition granted by the same Sir James, at the same time, Robert Wood, burgess, also in Craill, is duly and lawfully infest in the just third part of the said lands of Sauchop, with the just third part, &c. After this, Sir James grants a bond to Mr. James Monypennie, sometime of Dummo, wherein he obliges him and his heirs to infest the said Mr. James and his heirs, in an annualrent of 720 merks, to be uplifted by them out of the said lands of Sauchop; whereupon they are accordingly infest; and upon their infestment crave to get a decret for pointing of the ground. To stop this, Andrew Daw and Robert Wood raise a summons of reduction and declarator against Henry Hope, as assignee constituted by James Monypennie, son to Mr. James, to whom the bond was granted; *item*, Euphame Monypennie, and her husband, Mr. John Smith, minister in Edinburgh, and the rest of her brothers and sisters; before the commissioners for administration of justice: charging them to produce and exhibit the said contract, bond, or disposition, granted by Sir James to their fathers, with all infestments, charters, &c. that have followed thereupon; *item*, to exhibit all rights, title, or securities of the said lands, granted by