

No 117. 1632. February 23. L. JERRISWOOD *against* L. LIVINGSTON.

Inferior judges are incompetent to decide in extraordinary removings.

IN a suspension of a decret obtained by Jerriswood against Livingston, tacksman to him of some lands, pronounced by the sheriff of Lanark, which was given, decerning the tacksman to remove, being convened before the sheriff by Jerriswood, to find caution to pay the tack-duty of the years bygone owing, and in time to come, or else to remove, and for not finding caution, being decerned to remove; in a suspension, the decret was found null; because the LORDS found, That inferior judges were not competent judges to such actions, to decern tacksmen to remove for not finding caution; but that such actions properly belonged to the Lords of Session; and therefore found the decret null, albeit the charger produced an instrument, where the party decerned, renounced the tack and right of the lands; which was not respected, being done by one notary, under instrument, in a matter of importance; but the LORDS, in this same suspension, ordained the parties to dispute anent the finding of caution, if it were due to be found in this process, sicklike as if action *ab initio* had been intended before the Lords, to find this caution, or to remove. See WRIT.

Act. ———.

Alt. *Millar*.

Clerk, *Scot*.

Fol. Dic. v. 1. p. 497. Durie, p. 623.

1663. January 28. LORD BALNAGOUN *against* M'KENZIE.

AN action for proving a tenor not competent before an inferior judge.

Fol. Dic. v. 1. p. 497. Stair.

. This case is No 85. p. 545., *voce* ANNUALRENT.

1665. June 14. A Letter from the KING.

No 118.

THE Lord Ballantine Treasurer-depute compeared, and produced a letter from his Majesty to the Lords, bearing, that his Majesty having heard a doubt moved before him, whether declarators of ward, non-entries, &c. should be discussed before the Lords of Session, or Lords of Exchequer; his Majesty declared his pleasure, that in the mean time, till his Majesty got further evidence, and clearing therein, such actions should be pursued before the Lords of Session.

Which letter was ordained to be recorded in the books of sederunt.

Fol. Dic. v. 1. p. 497. Stair, v. 1. p. 281.