

1664. *December 22.* PATRICK NICOLL *against* GEORGE SEATTOUN.

IN a pursuit raised by Patrick Nicoll against George Seattoun of Minnes for payment of a debt, as representing his father, on one or other of the passive titles; and being insisted against, upon that title of behaviour as heir, by intromitting with the maills and duties of lands, whereof a condescendence was to be given in by the pursuer; the Act being extracted blank, and the condescendence not proven till after the second calling of the Act,—the Lords, in respect thereof, would not circumduce the term against the defender; but gave him a long term, *viz.* to the 1st of July thereafter, to complete his diligence for proving that his father was denuded of the lands, with the maills and duties thereof, [with which] it was alleged the defender had intromitted.

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1664. *December 23.* SIR ARCHIBALD STEWART of BLACKHALL *against* The LAIRD of ROTHEMAY.

SIR Archibald Stewart of Blackhall,—having apprised the lands of Rothemay, and others, from Alexander, Lord Saltoun, as lawfully charged to enter heir to umquhile John, Lord Saltoun, his father; upon that ground, as having right to the gift of ward and non-entry of the said Alexander, Lord Saltoun, of the said lands, by apprising, and as having right to the decret of general declarator of the said Alexander Lord Saltoun his escheat and liferent;—intents reduction against the Laird of Rothemay, Park, and others, for reducing a disposition granted by umquhile John, Lord Saltoun, to the late Lord Uchiltrie, of the said lands; upon that reason, that umquhile John Saltoun was interdicted, and the interdiction duly published, before granting of the said disposition; and for reducing the rights granted to the said Lord Uchiltrie to Rothemay and Park; which behoved to fall in consequence.

Whereunto it was ANSWERED, That there could be no process, because no infetment had followed upon the comprising.

The Lords repelled the allegiance, and sustained the pursuer's interest upon the comprising, which they found to be equivalent to an assignation, and the *interdictum* to an inhibition; so that, for reducing of thir pursuers and their authors their rights, there needed no infetment to pass upon the apprising.

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1664. *December 22.* CORNELIUS INGLIS *against* His TENANTS.

MR Cornelius Inglis, being infet in several lands and tenements about Kingsbarns, upon a comprising, pursues removing.

It was ALLEGED by Mr Roger Hoge, who compeared for his interest, No removing; because they were his tenants, by payment of maill and duty, several years before the warnings; who have right to the said lands by apprising, and had charged the superior.

To which it was ANSWERED, *Non relevat*, unless the defender will say he stands infeft, and, by virtue thereof, in possession, by uplifting the maills and duties; in regard an apprising and charge against the superior is not sufficient interest to pursue a real action. Neither can it be sustained, by way of defence, to impede a removing, at the pursuer's instance, against his own tenants, who stand infeft; especially the superior having suspended the charge, and Mr Roger having used no diligence for discussing thereof.

In this interlocutor the Lords were divided, and thought it disputable, whether a comprising, with a charge against the superior, and seven years' possession, were sufficient to maintain the tenant, in a removing, against one that stands infeft; and, therefore, it was not decided: but recommended to the Lord President to agree the parties.

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1665. January 5. THOMAS PAMPIN against JAMES and WILLIAM MELVILLE.

THOMAS Pampin, Englishman, pursues James and William Melville for £500 sterling, conform to an English bond.

It was ALLEGED Absolvitor, because they did make the pursuer assignee to their proceedings of their adventures in the Barbadoes and Geneva, towards payment of the sums pursued for. Conform thereto, the pursuer has intromitted with as much as will satisfy the sum acclaimed; at least the major part thereof; and therefore the pursuer ought to count and reckon.

To which it was ANSWERED, Ought to be repelled, in respect the pursuer's bond is clear and simple; and the allegiance is only relevant *scripto vel jramento partis*.

The Lords found the allegiance relevant, founded upon the assignation, probable by the pursuer's oath; and ordained them to give in a special charge of the particulars assigned; at which time the Lords would determine the manner of probation of quantities and prices intromitted with by the pursuer: for it was then alleged, that, as the assignation was probable by the pursuer's oath, so [is] his intromission with the quantities and prices, and not by witnesses; albeit the bond was an English bond, and granted in England.

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1665. January 7. The EARL of ROXBURGH against WILLIAM MOOR.

IN a removing, pursued by the Earl of Roxburgh against Mr William Moor, from some kirklands in Moorbottle,—

It was ALLEGED for the defender, That he had a disposition of the several lands from the vicar, by virtue whereof he has bruiked and been in possession these forty years bygone; which must defend him *in possessorio*, and is equivalent as if he had a tack of the lands.

The Lords repelled the allegiance founded on the disposition, charter, and forty years' possession, in regard there was no seaisine produced: and found the