

No 98.
tenants, it is
not necessary
to call the
master. In
removing the
heritor ought
to be called.
See No 95.
No 101. No
104.

that land ; which Graham being once called in this process, and dying *pendente lite*, the process ought to sist until it were transferred in some to represent him, that they might defend their own right, which he could not be compelled to do, nor to dispute upon his author's right, albeit he was possessor ;—THE LORDS repelled this allegiance, and found no necessity of transferring, seeing the Lords found it not necessary *ab initio* to have summoned the defender's authors ; but if the defender had any defence, which might defend him, that he should not pay the mails of the lands libelled to the pursuer, as was desired, he ought and might propone the same as he pleased ; but, in this action, which was for mails and duties of lands, the pursuer needed to convene none but the possessors, against which pursuit it was not a competent defence to allege that their author or master was not summoned : Which defence, although it be proponed and received in actions of removing at some times, yet it is not alike receivable in causes for mails and duties, wherein either the possessor ought to maintain his possession by excluding of the pursuers, or else if he cannot do that, as not being acquaint with the ground of his master and author's right, who is not called, he must, after sentence, suspend upon double poinding.

Act. *Stuart et Craig.*

Alt. *Nicolson et Mowat.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 140. Durie, p. 738.

1664. December 9. MR CORNELIUS INGLIS *against* MR ROGER HOGG.

No 99.
In a removing, it was not sustained as a defence, that the defenders were tenants to another, and he not called ; unless they could condescend upon their master's right, which might defend him and them.

MR CORNELIUS INGLIS pursuing a removing against certain tenants near Dunbar, upon an infettment and apprising, it was *alleged* for the tenants, that they were tenants to Mr Roger Hogg by payment of mail and duty to him, and he was not called. The pursuer *answered, non relevat*, unless the defenders condescend upon Mr Roger's right, which might defend him and them. The defenders *answered, 1st*, That they could not be obliged to dispute their master's right, but he ought to be called to dispute his own right. *2dly*, It was insinuate, that Mr Roger had an apprising, and a charge against the superior.

THE LORDS repelled the defence, unless the defenders condescended upon such a right as were valid to exclude the pursuer, being prior to his ; but the tenants alleged no such right, and Mr Roger's charge was posterior to the pursuer's infettment.

Fol. Dic. v. 1. p. 140. Stair, v. 1. p. 237.

1664. December 15. INGLIS *against* KELLIE.

No 100.
The Lords found that a first compriiser in posses-

THERE was a removing pursued at the instance of Mr Cornelius Inglis and Alexander Jack, as having right from him, against William Kellie tenant of certain acres, who having *alleged*, That his master Roger Hogg advocate, to