

1666. *January 24.*ELES of Southside *against* MARK CASS of Cockpen.

ELES of Southside pursues Cass, as heir to Mr Richard Cass, or as being charged to enter heir to him. Compearance is made for Cockpen, who was a creditor to the defender, and had appraised his lands; and *alleged*, No process; because the pursuer pursues as assignee: The assignation being his title, is posterior to the charge to enter heir, or summons which are raised, not in the cedent's name, but in the assignee's. It was *answered* for the pursuer, That Cockpen could not object this, because he was curator to the pursuer, and had appraised the lands, and proponed this allegiance of purpose to exclude the pursuer from coming in within year and day; because, if this summons were cast (the defender being now out of the country) before a new charge to enter heir could proceed upon 60 days, and citation upon 60 days, and the special charge upon 60 days, the year would elapse. It was *answered*, That Cockpen had never acted as curator, and that this summons was raised by the pursuer himself, after his majority, who was major more than a year ago. It was *answered*, That the pursuer had but very lately recovered his writs from his curators, tho' he used all diligence, and was forced to transume *against* some of them.

THE LORDS sustained the summons, in respect Cockpen had been curator, and so near the time of minority.

*Stair, v. I. p. 343.*

1666. *July 13.* NORMAND LIVINGSTON *against* LADY GLENAGIES.

NORMAND LIVINGSTON having appraised the lands of Glenagies, pursues the tenants for mails and duties; wherein the Lady compeared, and *alleged*, That she ought to be preferred, because she is infeft in a liferent in the lands by her contract of marriage. It was *replied*, That the Lady and her husband, for all right that either of them had, had given a right to their cautioners to uplift the mails and duties of the lands in question, for payment of debts, and this debt particularly, whereon this appriser proceeds; with power also to the cautioners to dispone any part of the lands for payment of the debts; which the lady ratified judicially, and which now excludes her from hindering any of these creditors to get payment. It was *answered* for the Lady, *imo*, That this right was but a factory or commission, and so expired by the Laird's death; *2do*, It was only in favours of the cautioners, for their relief; but the creditors had no interest to allege thereupon; *3tio*, The cautioners were never distressed; and it was a mistake, being to them as creditors in the sum, not being so in effect.

THE LORDS having considered the commission, and that it bore not only the Lady to consent, but for all her right to grant commission; and that not only

No 10.

A curator, who had appraised the minor's lands, found not entitled to impede the diligence of another creditor.

No 11.

A prier consent founds a personal objection *against* opposing what had been consented to.