

repelled, because there is no need of acknowledgment of the defender to be rentaller and tenant condescended on; and, if it were, it only could be relevant as to bygones, but not as to times coming, since the interruption of the warning foresaid.

The Lords repelled the allegiances proponed for the defender, and found That a [rentaller] could not assign.

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1667. February 15. DONALD M'GILCHRIST against JOHN ROWAN and JOHN MUDIE.

DONALD M'Gilchrist did comprise certain tenements, within the burgh of Glasgow, from John Mudie, his debtor; and, upon his comprising, being infest therein by the bailies of Glasgow and town-clerk, pursues the possessors for payment of their duties. There is compearance made for one John Rowan, who has a clandestine disposition from the debtor, who is his brother-in-law; and upon it a seasine given, by virtue of the precept contained in the disposition, given by a bailie, constitute thereby, and a private notary; and ALLEGES he is infest, and in possession before the pursuer.

To this it was REPLIED, That Rowan's seasine is but one month before the pursuer's seasine, and is clandestine, *inter conjunctas personas*; and so cannot have force in judgment in prejudice of a lawful creditor, his possession not being legal by authority of a judge; and is but momentaneous, the pursuer being delayed, by process and advocacy, above one year. *2do.* Rowan's seasine is null, being within Glasgow, and not given by a bailie and town-clerk; which is the express law of the kingdom, by Act of Parliament *in anno 1567*, cap. 57.

It is DUPLIED, *1mo.* That the Act of Parliament is only of burgage lands. *2do.* That the pursuer cannot oppose the nullity of Rowan's seasine; because the pursuer his seasine is null, albeit it be given by a bailie and town-clerk; because the lands are not holden in burgage of the town of Glasgow, but of an hospital; and the pursuer's seasine bears to be holden burgage.

To which it was TRIPLIED, That the pursuer's nullity against the excipient's seasine is a nullity founded in law, and an express Act of Parliament, and verified by the excipient's seasine bearing to lie within the territory of Glasgow; but the nullity of the pursuer's seasine, alleged by the excipient, is not verified; for the holding of the tenement is not instructed. *2do.* The pursuer's seasine bears not to be holden burgage. *3tio.* The apprising bears *ex stilo*, both in the decerniture and allowance thereof, to be holden of any other lawful superior whatsoever; which, with the seasine given to the bailie of the burgh and town-clerk, is a perfect right; and the excipient's right both base and illegal, as is verified by the seasine itself.

The Lords preferred M'Gilchrist, the pursuer; unless Rowan would offer him to prove that the tenement, which was the subject of the controversy, was holden of the hospital; and that the hospital was infest therein, and not the town of Glasgow.

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