

raised a reduction and improbation against Mr Alexander Levingstoun, wherein certification was granted; thereafter Gustavus Brown did adjudge the right of the tenement from the heirs of the said David, and pursue a wakening of the said improbation against the heirs of the said Mr Alexander Levingstoun.

It was ALLEGED for the defender, That the wakening could not be sustained, which is only when the pursuer and defender are living; whereas, here, they being both dead, there ought to be a transferring of the process, both *active* and *passive*.

It was REPLIED, That it was only necessary in personal actions for payment of debts and doing of deeds.

The Lords, notwithstanding, did sustain the defence, and found a necessity to transfer.

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1670. February 18. MILLER, Schoolmaster of PRESTON-KIRK, *against* The TENANTS of HAILES and TREPRAIN.

IN a pursuit, at the schoolmaster's instance, against the tenants of Hailes and Treprain, belonging to the Viscount of Kingstoun, for payment of 16 shillings Scots, imposed upon every husband land, to be paid to the schoolmasters, by a stent agreed to and subscribed by the whole heritors; to which action the Viscount, being likewise called by order of the Lords, who declared that he would not oppose the pursuit: It was ALLEGED for the tenants, That they could not be decerned; because, the stent-roll being only subscribed by their master, it could not oblige them, they not being obliged by their tack to pay the same; and the imposition upon the husband land was not *debitum fundi*; neither was there any arrestment used. Likeas, some of the tenants were but lately come to the ground, and were pursued for many years preceding.

The Lords did sustain the defence; notwithstanding it was REPLIED, That all the rest of the tenants of the parish made payment, and that, their master being cited in this process, they might justly retain so much of their tack-duty.

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1670. February 21. MACQUEEN *against* The COLLECTOR of the VACANT STIPENDS.

MACQUEEN, having gotten a sentence against the Marquis of Douglas, as is before mentioned, he was pursued, at the instance of the collector of the vacant stipends, for the half year's stipend 1669 years; wherein, having repeated that same allegiance,—That, albeit he was called to be minister at Edinburgh, yet he had served at the kirk where he was incumbent till March; and that, being only a stipendiary minister at Edinburgh, his wife and children can have no ann.

The Lords did sustain the allegiance, notwithstanding he had not served the full half year, but only four months thereof.

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