

*solvitur et jus accipientis*; and the escheat was not declared, and so he had no title whereto he could ascribe his possession, but only that disposition now reduced *ex capite vis et metus*: But reserved to the Duke all his other pretensions on the land. Some cried out on this interlocutor.

*Advocates' MS. No. 662, folio 309.*

1677. November 27. CARSAN *against* MAXWELL.

CARSAN obtains a decret for making arrested goods forthcoming, before the Stewart of Kirkeubright, against Maxwell; who suspends,

*Imo*, It bears no dispensation. ANSWERED, The defender was compearing in the decret, and so had acknowledged, founded, and prorogated the jurisdiction, without proponing that dilator; *et primus actus judicii est judicis approbatorius*. And it was within ten days of a head-court, at which time inferior judges need no dispensation. REPLIED, The compearance is disclaimed as officious, simulate, and patched up; and the decret bears not that the procurator compearing for him had a mandate. DUPLIED, A mandate was presumed, and the decret needed not bear it. Yet see *supra*, No. 576, *M'Min* and *Newlands*, [19th June, 1677.]

Their second and third reasons of suspension were, that the decret was intrinsically null, because it bears defences were repelled, and docs not tell what they were, only because the judge knew them to be frivolous and dilatory. *Item*, that compensation was proponed and repelled.

But the reason of this was because it was proponed generally, without a special condescendence whereon the compensation was founded. I offered to admit any relevant exception of compensation, or otherwise, providing it were instantly verified. Which they failyieing to do, after several side-bar callings, the letters were found, by my Lord Strathuird, orderly proceeded.

*Advocates' MS. No. 663, folio 309.*

1676 and 1677: JOHN HADDOWAY *against* ——— INGLIS and WILLIAM SOMERVELL.

1676, December 12.—IN an action for maills and duties, pursued by John Haddoway, of some lands beside Douglas, compeared one Inglis and Mr William Somervell, and competed upon another infestment; wherein possession being admitted to Haddoway's probation, he, for proving his infestment was clad with possession before their right, produced, *Imo*, A discharge of the feu-duty from the Marquis of Douglas, superior. The Lords found, at the advising, this alone was not a sufficient proof of possession. *2do*, He produced a holograph discharge, granted by him to the tenant possessor of the land of his year's rent.

The Lords found such discharges were not probative of any man's possession, because it did not prove *quoad datam*, and might have been recently granted after