

1684. *March.*PITLIVER *against* PROVOST MILN.

BROOMHALL having disposed to Pitliver an infeftment of annual-rent, out of the lands of Darsie, and an infeftment of property out of Broomhall; and having likewise disposed to Robert Miln the said right of annual-rent out of the lands of Darsie, and, *in eodem corpore juris*, a right of annual-rent out of the lands of Broomhall; there arose a competition betwixt Pitliver and Robert Miln. Alleged for Robert Miln, That he having recovered a decret of poinding of the grounds of the lands of Darsie, before Pitliver's confirmation of the property of Broomhall, his decret must likewise clothe the right of annual-rent, *quoad* Broomhall, which was *in eodem corpore*; and, since the registration of rights, infeftments cannot be said to be latent, so as any kind of diligence ought to clothe them with possession. Nor has the diligence any respect to the publication of the same to the lieges: for certainly a creditor's granting a discharge of money, paid to him by the debtor, relative to different rights of lands, would clothe all these with possession, whether they be *in eodem corpore* or not; of which the lieges would know little, whether the same remained private or public: and a process of poinding is a better notification to them. Answered for Pitliver, Private rights are made public, and clothed with possession the same way, since the Act for registration, as before; and though, in the case of the Lord Cardross against Van Sommerdyke, &c. March 1682, the decret of poinding the ground was sustained to clothe the infeftment with possession as to other lands, *in eodem corpore juris*, lying in another jurisdiction; yet the payment or actual poinding followed before the competing right was clothed with possession, as in Mr Thomas Hay's case against Kettlestone's Creditors—or the lands without were contiguous with those within the regality, which is a natural, though not a formal union; nor can the process of poinding, founded on the sasine of Darsie, be considered a publication *quoad* the lands of Broomhall, which are not comprehended therein. The Lords delayed to pronounce interlocutor till the practiques were considered.

It was pleaded in this process, That Broomhall [could not] give an annual-rent out of his annual-rent out of Darsie, because that were *servitus servitutis*. But he having likewise an apprising of the property, this point was not insisted upon; nor is it solid.—*Castlehill's Pratt. tit. Infeftment, No. 67.*

*Page 165, No. 596.*

---

1684, *March*; & 1685, *January*. The LAIRD of HORSBURGH *against* JOHN ADAM.

IN a reduction, *ex capite lecti*, of a disposition made by a bastard, at the instance of a donator of the bastardy, upon this ground, That the disposition contained a clause dispensing with delivery, which makes it presumed to have been done *in lecto*, especially at the donator's instance, who is materially in the right of *ultimus hæres*; and bastards have not *testamenti factionem*;—the Lords found that the pursuer must prove that the defunct was *in lecto* the time of subscribing.—*March 1684.*

The debate being afterwards resumed, the Lords adhered to their former

interlocutor, unless the donator would positively offer to prove that the disposition was signed *in lecto*.—*January 1685, partibus ut supra. Vide No. 132, [Kolstoun against Weir, November 1682.]*

*Page 181, No. 653.*

---

1684. *November 22.* ————— *against CUNINGHAME.*

A TUTOR-TESTAMENTAR, who thereafter was donator to the pupil's marriage, having signed a discharge, with the pupil, of rents to a tenant, which was obtruded against him as a qualification of his acceptance of the tutory;—Alleged for the defender, That the discharge, not being holograph, was null *quoad* him, for want of writer's name and witnesses. Answered, It was a discharge to a tenant that requires not the solemnity of witnesses. Replied, Though such a discharge might be sufficient for the tenant's exoneration, it is not sufficient to make the defender liable as tutor, he not being therein designed *tutor*. The Lords, in respect of the other papers and presumptions of acceptance mentioned, No. 982, [————— against Cunningham, 12th November 1684,] sustained the discharge as a probative writ, the defender not denying the subscription.

*Page 224, No. 793.*

---

1684. *December.* SCOT *against COCKBURN.*

ONE Scot, who was about to go to Holland, having got a bill from one George Cockburn, upon a tailor there, dated in September, and payable on six days' sight; which bill being protested in November thereafter, for not-acceptance, Scot pursued Cockburn for another debt, who proponed compensation upon the bill;—Alleged for the defender, That the bill was protested. Answered, The suffering of the bill to be protested was occasioned through the pursuer's fault, in his delaying to present the same *debito tempore*. Replied, The pursuer being to carry the bill along with him from Scotland, his necessary occasion detained him in Scotland some time after the date; 2. *Esto* the pursuer had been *in mora* of presenting the bill, yet he could not be answerable for the sum therein contained, unless the defender make it appear that he had effects in the tailor's hands; for otherwise he hath no prejudice by the delay or the tailor's breaking. The Lords sustained both the replies relevant; and, the defender producing a letter from the bankrupt acknowledging his receipt of goods from him, they sustained compensation for value, in case it did appear that the pursuer was *in mora* of presenting the bill.

*Page 36, No. 162.*

---

1684. *December.* BUTTER *against BUTTER.*

JAMES Butter having taken a bond of borrowed money, in the name of his nephew, without delivering the bond, or reserving any liferent to himself, and