

1685. *March 13.* MR. ALEXANDER FERGUSON *against* ROBERT FERGUSON.

**No. 67.**

Where eviction is imminent.

The case of Mr. Alexander Ferguson of Isle against Robert Ferguson of Hallhill, his uncle, was debated and advised : Hallhill by his bond is obliged to pay Isle the annual-rent of 2,000 merks, so long as he shall bruik the peaceable possession of these lands of Halhill ; and he being pursued therefore, alleged, The condition of the bond had failed, for John Bannatine having a prior inhibition, raised a reduction, and obtained a decret. Answered, This decret was no sufficient eviction nor distress, because it was only a decret of certification for not producing his writs, which he should not have suffered to pass ; *2do*, He had gotten a ratification from the reducer, which must accresce. Replied, A certification was all one in this case, because, though he had produced his writs, he would certainly have succumbed ; *2do*, Though the ratification bore *gratis*, yet he offered to prove it stood him 700 merks. The Lords, after a hearing in presence, found that decret of certification was no sufficient distress, but that he should have defended, seeing there might be nullities in the execution of the inhibition ; and there was probable ground to think the inhibition was paid, by his transacting with others, whose rights he had reduced.

*Fountainhall, v. 1. p. 352.*

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1686. *January.*

MAJOR BUNTIN and DRUMMELZIER *against* MURRAY of Stanhope.

**No. 68.**

The casualty of marriage never understood to be warranted against ; and therefore a feu vassal, whose right was after the act 16th Parl. 1633, being pointed for the avail of his superior's marriage, was found entitled to no relief.

*Harcarse.*

\* \* \* This case is No. 16. p. 7763. *voce* JUS SUPERVENIENS, &c.

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1687. *January 18.*

SMITH *against* ROSS.

**No. 69.**  
Double alienation.  
See No. 51.  
p. 16596.

David Ross of Balnagoun being pursued by Patrick Smith of Braco, on the warrantice of his father's disposition ; and the process having slept thirteen years, and a wakening being now raised, the clerk-register, to whose behoof it was, got it to be summarily called without its being seen or inrolled *in communi forma* ; whereon Balnagoun gave in a bill, representing this was contrary to the regulations, whereby the clerks are discharged to write upon any such process, &c.