

1696. *June 30.*

RACHEL INGLIS, Petitioner.

RACHEL Inglis, relict to John Trumball of Minto, represented, by a petition, That she had right, by progress, to a bond due by Mr William Auchmouty, who had been out of the kingdom these many years, ever since her right, and it was within a few weeks of the forty years' prescription; and she had intimated the same at the market-cross of Edinburgh and pier and shore of Leith; but was informed he was now within the kingdom, riding in some of the King's troops, but knew not which; and so she had done all in her power to interrupt the prescription, being neither able to apprehend him personally nor to find out his dwelling-house;—therefore craved the Lords would sustain her diligence as a sufficient interruption.

The Lords considered, If there was any process depending, they might allow an edictal citation as to such who had no fixed domicile, or at the market-cross of the shire where the troop he rode in lay; but, *hoc ordine*, they refused the bill, and declared they would take the same to consideration when any process on the debt should be intented, and the defence of prescription founded on.

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1696. *July 9.* MUNGO JOHNSTON of NETHERPLACE *against* JAMES JOHNSTON of LOCKERBIE and his CREDITORS.

MUNGO Johnston of Netherplace, against James Johnston of Lockerbie and his Creditors, craving preference to the rents of the £20 land of Lockerbie, as standing infest as heir of conquest to his younger brother, Mr Archibald, to whom they were disposed.

ALLEGED,—He was a consenter to young Lockerbie's contract of marriage, which was taken of purpose to cut off all these pretences.

ANSWERED,—Not only by the contract of marriage, but also by a declaration apart, all his rights upon the estate are reserved.

REPLIED,—If this were extended to Mr Archibald's right, then it would destroy the consent given; and, though the marginal note mentions also rights they may succeed to by their brother, yet this margin being offered to be improved as false, Netherplace would not abide by it, and so it is not to be regarded; and the reservation can import no more than their patrimonies and portion-natural, that their consent to their nephew's contract should not cut off these.

The Lords found the reservation extended no farther, and so that their consent did comprehend Mr Archibald's right; and his heir of conquest could not obtrude nor use the same now; and therefore preferred the creditors to the lands in controversy.

Netherplace protested against this interlocutor, and, conform to the claim of right, appealed to the Parliament.

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