

1696. *December 3.* SIR JOHN DEMPSTER of PITLIVER *against* MR JOHN MACKENZIE of ASSENT.

SIR John Dempster of Pitliver craves, by a bill to the Lords, a warrant for an edictal citation of Mr John Mackenzie of Assent, brother to my Lord Seaforth, on a summons to pay a debt, because he had failed to present the Countess, his mother, conform to his bond, and, to frustrate it, had retired with his family to the Lewis, where no messenger durst go to cite him, and therefore craved, in the terms of the 65th Act, Parliament 1587, they might be allowed to cite at the market-cross of Inverness, as the nearest burgh-royal in the Lowlands, there not being *tutus accessus* whither he had retired. ANSWERED,---That Act of Parliament is only in favours of the King's causes. *2do.* It can only take place when the Highlands are broken. REPLIED,---If the King need to use that extraordinary remedy, much more ought it to be indulged to the subjects. *3tio.* It has been often granted *cum causæ cognitione*, 29th June 1666, M'Pherson against M'Leod; and lately, in the Criminal Court, the Justiciaries granted an edictal citation to the Laird of M'Intosh against M'Donald of Keppoch and his Accomplices; and *Maranta de Judiciis*, Part 6, allows this way, *ubi locus non est securus*. It was urged, That this might be very prejudicial to the inhabitants of these remote parts, for warrants might be thus sought for citing them which may never come to their knowledge, and so decreets pass against them. But the Lords thought John, in his brother Seaforth's land, would be *difficilis conventio*; and therefore granted Pitliver's bill for an edictal citation against them.

*Vol. I. Page 739.*

---

1696. *December 4.* ROBERT MILNE *against* The SISTERS and HEIRS of MR JAMES STEVENSON.

I REPORTED Robert Milne, deacon of the masons, against the Sisters and Heirs of Mr James Stevenson, late secretary-depute for Scotland, for implementing a minute of sale of some houses in Edinburgh by Mr James's two factors, whose commission was only to lift his rents, &c. : But it was ALLEGED,---That, having entered into a communing with Mr Milne, and he having offered ten years' purchase, they acquainted Mr James (who was then at London,) with the same; and he, by a letter, signified he thought the price too small, and expected twelve years' purchase, but left to them to do what they thought most for his advantage: whereon they entered with the deacon into a written minute, and sent an extended disposition to Mr James, to be signed by him; and he, by a second missive, intimated to them that he was displeas'd with the absolute warrandice inserted therein; and that the paper having fallen by his hand, he desired them to form a new one, with the advice of lawyers, and transmit it to him, so as he may have no more scruples. All which prove he ratified the bargain; and as he would have been forced to implement the minute, so must his heirs.

ANSWERED,---The first letter gives them no absolute power to sell, but only