

much on the £100 of rent, which the Town should be discharged to exceed. But this was not thought practicable, seeing cess varies, and the houses may increase or decay.

The Town of Leith appealed to the Parliament, and some demurred, because it was not within ten days after pronouncing the interlocutor; but at last it was admitted.

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1697. *February 9.* CHRISTIAN ORD *against* AGNES INNES, Relict of Lawrence Ord.

IN a removing, pursued by Christian Ord against Agnes Innes, Relict of Laurence Ord; ALLEGED,---I cannot remove, because I am provided to the life-rent of all the conquest during the marriage; and *ita est*, I offer to prove these houses were acquired *stante matrimonio*. ANSWERED, *1mo*. No personal obligation can defend against a removing. *2do*. It can be made appear this was no true conquest, but he lifted his other sums, and built thir houses and stables with them. REPLIED,---You, as heir to the granter of my obligation, cannot quarrel it; for *quem de evictione tenet actio eundem agentem repellit exceptio; et frustra petis quod mox es restituta*.

The Lords found the Relict ought to remove, unless she found caution for the rents, in case she succumbed; and this, in regard the heir offered her caution, if she, *in eventu*, were found to have right to the life-rent of these houses as conquest.

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1697. *February 10.* M'KENZIE of ROSEHAUGH and CREDITORS of CUNYNGHAM of AUCHINHARVEY *against* ADAM CAMPBELL of GARGUNNOCK.

[See the prior part of the Report of this Case, Dictionary, page 16099.]

HALCRAIG reported M'Kenzie of Rosehaugh, and other Creditors of Cunyng- ham of Auchinharvey, against Mr Adam Campbell of Gargunnoch, (mentioned 10th December 1696,) for reducing a disposition by Auchinharvey to him, as being *inter conjunctas personas*, (brothers-in-law,) without a full adequate price, and necessary preceding cause.

ANSWERED,---This does not fall under the compass of the Act of Parliament 1621; for the disposition is granted when he was in full capacity, there being no diligence then against him at the instance of his creditors, to disable him. And as to the price, it is so competent, that he is content to quit, if any will redeem him. And as to the words of the Act of Parliament, "necessary cause;" this must not be so interpreted as to presuppose a prior antecedent cause, on which he might have been compelled to grant the disposition; but only that it was so far from being gratuitous and voluntary, that it was for payment of his just and lawful debts.

The Lords found his disposition did not fall under that clause of the Act of Parliament.

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