

custody and possession, and grazing with his horses; which possession in moveables both presumes and proves property, unless old Elrig had likewise proven *quomodo desierat possidere*, that either he had lent her to his son for a time, or had only sent her to graze in his ground. And it is not enough that he was once *dominus* of the mare; for law presumes that, being in the son's possession the time of the poinding, she was his; and he might either have bought her, or got her in gift from his father some days before the poinding. If I have a watch, it is not relevant for the watchmaker to say, I offer to prove that watch was mine last week, to give him *rei vindicationem*; but he must also prove *quomodo* he lost the possession, else it is presumed to be mine who now have it; for the dominion of moveables transmits without writ, and oftentimes without any witnesses present; and therefore, ere you can recover them, you must first prove that you lost the possession, *clam vi*, or *precario*, or by some title not alienative of the property, as loan or the like.

*Vol. II. Page 75.*

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1699. *December 26.* BROUN of FINMOUTH *against* DUNLOP of that ilk and WILLIAM HAMILTON of WISHAW.

DUNLOP of that ilk, and William Hamilton of Wishaw, having a right to a comprising on Broun of Finmouth's estate, he raises a reduction and improbation thereof; which being called, and they declining to take a term, contending the pursuer had no title sufficient to force them to produce, there is a certification granted, and, by inadvertency of the defenders, extracted: Against which Dunlop and Wishaw reclaim by bill, and crave to be reponed on production; and that it was extracted under communing, and after the agent had promised to forbear it for some time. It was ANSWERED,---The apprising was most unjust against Finmouth, who was only cautioner for Sir John Broun of Fordel in this bond, and the principal's estate had paid the debt; yet Dunlop, his grandchild, had suppressed the documents, and taken a right to this apprising, which he was bound to have purged, and relieved him; and, therefore, though certifications be odious in their own nature, especially when they pass before the taking of terms, yet here it is only to obviate an unwarrantable advantage they were taking of a poor cautioner.

Some were for the standing of the certification, and referring them to a reduction; but, seeing it was *de recenti* quarrelled, the Lords allowed the Ordinary to take trial, by examining the agent, clerk, and his extractor, anent the way and manner of its being taken out, and if any subreption was used therein. Some argued that an agent's promise did not bind the party; but, *in actibus processus*, they must stand to what their agents do.

*Vol. II. Page 76.*

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1699. *December 27.* GLENDINNING of PARTON *against* NEILSON of CORSACK.

Neilson of Corsack obtains a decret *in foro* against Glendinning of Parton,