

1711. December 27.

The LADY ENTERKIN *against* JOHN CUNINGHAM of Enterkin, her Son.

No. 6.

The Lady Enterkin having complained of her son, for unwarrantably dispossessing her, by a decret of his own Baron Bailie, of certain lands she had peaceably possessed more than seven years, the Lords reponed the complainer summarily to the possession, upon her finding caution, before extract, for her intromissions; albeit it was alleged for Enterkin, That the complainer's possession had a clandestine and precarious entry in the time of his minority, wanting a sufficient title to support it; and she was dispossessed *via juris*, by decret of a lawful court; for though a Baron may, by his Bailie, give decret against his tenants, for payment of their rents, if the interest of no third party in possession interfere, yet a decret against the tenants, tending in the consequence to overturn the right and possession of a third party, is but *color quæsitus* to cover oppression.

*Fol. Dic. v. 2. p. 402. Forbes, p. 567.*

1712. July 17. JANET HUME, Relict of John Hume of Eccles.

No. 7.

The Lady Eccles represented by bill, That she having obtained from Captain Thomas Young of Lenie, a disposition to an apprising affecting the estate of Eccles, which disposition, lodged in the hands of George Renton, her doer, happened to be amissing sometime after his death, through the confusion of his papers, and was found without two sheets of the narrative, that had been torn off through careless keeping, but having the whole dispositive parts, subscriptions, and margins entire; and craving, that their Lordships would interpose their authority for supplying the narrative, by the oaths of George Robertson, writer in Edinburgh, drawer of the disposition, and James Clerk, his servant, writer thereof, who could depone upon the tenor of the narrative; and that it was exactly conform to two sheets written by James Clerk's hand, and given in with the petition; and craving their Lordships would authorise the sheets of the narrative so made up, without a formal proving of the tenor, to be added to the disposition, and the disposition so made up to be received in the ranking of the creditors of Eccles, as a full and entire writ.

The Lords remitted to the Lord Fountainhall, Ordinary of the ranking, to take the depositions of George Robertson and James Clerk, in order to redintegrate the disposition.

*Fol. Dic. v. 2. p. 402. Forbes, p. 617.*

The depositions of the drawer and writer of a disposition allowed to be taken summarily for supplying two sheets of the narrative thereof, which had been torn off through careless keeping, in the hands of an agent, whose papers fell into confusion after his death, the whole dispositive part, subscription, and margins of the writ, being entire.