

the son of one of them, and so it would at least recognise *quoad* two parts.—*Replied*, By a public tailzie, Patrick Forbes had provided these lands to the eldest son of the eldest daughter; which the LORDS found relevant.—Then having advised the oaths of Irvine of Arnage and Bailie Drum, anent the extinction and payment of the comprising of Sir David's author by the common debtor's means; though Sir David *alleged*, *imo*, That the cedent's oath could not militate against assignees; *2do*, *Multo minus* after they were denuded; they waved that point, and found Tolquhon behoved first to be paid off the 10,000 merks, to which, by the minute, he had restricted his comprising, as mentioned *supra*.

No 94.

June 15. 1688.—Sir David Thoirs's and Sir Alexander Forbes of Tolquhon's case being advised, Sir David gains the interlocutor, and is freed from the contract of 10,000 merks, which was one of the sums wherewith Tolquhon sought to burden the lands, which Sir David was seeking to redeem by the compt and reckoning. See MINOR.

Fol. Dic. v. 1. p. 177. Fountainball, v. 1. p. 225. 251. 327. 353. & 507.

1766. January 17.

ALEXANDER M'ADAM *against* ALEXANDER EARL OF GALLOWAY.

IN 1678, Alexander, then Earl of Galloway, granted an obligation to Henry Dun, binding himself to denude, in his favour, of a piece of land called Belscroft, upon payment of L. 400 Scots.

In 1763, John M'Adam, the great grandson of Henry Dun, granted bond to Alexander M'Adam, his son, who led an adjudication against him, as charged to enter heir in those lands to Henry Dun; and, upon that title, pursued an action of mails and duties against the tenants.

Compearance was made for the Earl of Galloway, who produced a sasine in the lands of Belscroft, in 1684, proceeding on the precept of Henry Dun; and *contended*, That, as he and his predecessors had possessed the lands immemorially, the process was incompetent, till his titles should be reduced in a proper action.

Answered for the pursuer. The adjudication is a sufficient title against the tenants, Stair, IV. 22. 7. They are the only defenders called. The compearance of the Earl, indeed, produces a competition, but it is a rule of law, that all competitions imply mutual reductions. Nor is the pursuer under any necessity of instructing the right of the predecessor, to whom his father was charged to enter. The only title produced by the Earl, is a sasine upon the precept of that very predecessor, whose right he cannot object to, without cutting the branch upon which he himself stands.

No 95.
Found incompetent, by an action of mails and duties, to set aside the right of a person in immemorial possession, and producing a sasine. Reserved to insist in a reduction of the defender's rights.

No 95. Had he produced a disposition indeed, from Henry Dun, he must have been preferred to the mails and duties ; but he produces no more than a sasine ; and a sasine, without its warrant, cannot avail in a competition of real rights ; Stair, II. 3. 19.

Replied ; Upon the footing of the infeftment 1684, the Earl has the benefit of a possessory judgment, for which purpose, the production of a sasine is sufficient ; Stair, IV. 26. 3. and 4. ; Bankton, II. 1. 33. p. 512. and IV. 24. 49. ; Erskine, IV. 1. 50. And it makes no difference that the summons was executed against the tenants only. Still the Earl was entitled to compear for his interest.

When a process of reduction is brought, it will be time to consider, whether the personal faculty of redemption granted to Henry Dun be not lost by prescription.

‘ THE LORDS sustained the defences, and assoilzied from the process of mails and duties, reserving to the pursuer to insist in a reduction of the defender’s rights, and to the defender his defences, as accords.’

Act. *M^e Queen, Crosbie.*

Alt. *Loekhart.*

G. F.

Fac. Col. No 29. p. 247.

What allegiances proponable against a process of adjudication.—*See* ADJUDICATION.

Objections competent to one party and not to another.—*See* JUS TERTII.

See APPENDIX.