

John Drummond younger, and whole other circumstances of this case, find sufficient evidence that John Drummond elder did make a settlement of the same date, by which he divided his whole heritable and moveable estate into eight shares, whereof two parts were given to John Drummond, his eldest son, and the remaining six parts to his other children; and, therefore, and in respect of the discharge and renunciation executed by John Drummond younger, repel the defences, and find that he must convey the houses libelled to the pursuers."

No 647.

Act. *Rae.*Alt. *Montgomery, Maclaurin.*

G. F.

Fol. Dic. v. 4. p. 168. Fac. Col. No 50. p. 278.

S E C T. XI.

Propinquity.—Simulation.—Rent of Lands.

1567. April 7.

HALIBURTON against L. HALTON.

ANENT the action pursued by George Haliburton of ——— against the Laird of Halton, for redemption of the mill of Gogar, annailzied by umquhile George Haliburton, father to the said pursuer's grandfather, it was *alleged* by the said defender, That the said pursuer was no heir to the said George, who annailzied the said mill, and took reversion thereof to him and to his heirs. It was *alleged* by the pursuer, That he was heir by progress to the said umquhile George; and to prove the same, he produced a sasine, given by the Laird of Halton, of the lands of Gogar, superior thereof, to umquhile Patrick Haliburton, grandfather to the said pursuer; which sasine called the said Patrick son and heir to the said umquhile George, annailzier of the said mill; and also, the said pursuer produced a sasine of the said lands, given to George Haliburton, goodsire, as son and heir to the said Patrick; and also, he produced an instrument of sasine of the said lands, given to William Haliburton, father to the pursuer, as heir to his father George; and also, produced an instrument of sasine, given to himself, as son and heir to the said umquhile William, his father. It was *alleged* by the defender, That the sasine produced of the said Patrick proves nothing to the producer's effect, nor instructs not his summons; because the said instrument bears, that the superior gave sasine of the lands of Gogar to the said Patrick, calling him son and heir to the said George; which words were

No 648.

Found, that, *in re antiqua*, the superior's sasine, naming a man, son and apparent heir to another, was sufficient proof of propinquity, *even contra tertium*.

No 648. but *verba narrativa* of the superior, and prove noway to be heir to the said George. It was *alleged* by the pursuer, That he bruiked the same lands that the said George held in heritage, by progress, as he had proved, and has the reversion of the same in his hands, as heir foresaid; and albeit the said Patrick, his grandfather, was not served as heir to his father George, it was enough that he was put in his lands heritably by the said Lord, calling him son and apparent heir to his said father; and also, it was *in facto antiquo* by the space of six score years and more; which allegiance of the pursuer was found relevant; and found that the pursuer had proved enough for the instruction of his summons, by the allegiance foresaid.

Fol. Dic. v. 2. p. 271. Maitland, MS. p. 178.

No 649. 1669. December 4. JEFFRAY against JEFFRAY.

A DONATAR having made faith at the passing of the gift, that it was for his own behoof, no witnesses were thereafter admitted against him, nor other presumptive evidence that the gift was simulate.

Fol. Dic. v. 2. p. 271. Stair. Gosford.

. This case is No 263. p. 11598, *voce* PRESUMPTION.

No 650. 1708. July 20.
THOMAS NICOL, Writer in Edinburgh, against JOHN PARK of Fulfoordlies.

IN a count and reckoning, at the instance of Thomas Nicol against Park of Fulfoordlies, for his intromissions with the rents of the lands of Nethermoninet, the LORDS found an old tack not relevant to prove the rental, unless possession and payment conform were also proved.

Fol. Dic. v. 2. p. 271. Forbes, p. 269.