

but albeit it had been done, yet they could not have been holden to have given their oaths upon any arrestment made in their predecessors' hands; that being *factum alienum*, and not consisting in their knowledge. *4to*, The said decret is null, because the said Dumbar of Moynes, who became debtor to Elisleisk, being dead, there is no right established in the person of his heir or representative, by obtaining decret of transferring against him; till which were done, no action nor decret for making arrested goods furthcoming, could be sustained. And, therefore, the pursuers crave to be reponed *in integrum* thereagainst, *cum omni causa*, sicklike as if the same had never been pronounced. For instructing of all which, the pursuers produce the extract of the said pretended decret which they crave to be reduced.

And the Lords, finding the desire of the summons relevant, ordain the defender's procurators to produce the writs called for; with certification that, if they failyie, the Lords will reduce the writs, and restore the pursuers thereagainst: and, for satisfying the production, assign them two several terms, whereupon two several acts lying in process were extracted. Both which terms being come, and the production not yet made,—the Lords, because of the said not production, reduced the whole writs called for, except the said decret produced by the pursuers allenarly, in manner above written.

*Act. Pat. Fraser. Alt. James Abernethie.*

*Signet MS. No. 8. folio 3.*

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1663. *November 26.* ANDREW DAW and ROBERT WOOD *against* HENRY HOPE, EUPHAME MONYPENNIE, JOHN SMITH, and OTHERS.

ANDREW DAW, in Craill, *in anno* 1650, is infeft upon disposition made to him by Sir James Lermonth of Balcomie, Knight, in the just two part of the lands of Sauchop, lying within the Sheriffdom of Fife; with the just and equal two part of the mansion or manor-place thereof, houses, biggings, yards, salt-pans, &c. lying within the parish of Craill. Upon disposition granted by the same Sir James, at the same time, Robert Wood, burgess, also in Craill, is duly and lawfully infeft in the just third part of the said lands of Sauchop, with the just third part, &c. After this, Sir James grants a bond to Mr. James Monypennie, sometime of Dummo, wherein he obliges him and his heirs to infeft the said Mr. James and his heirs, in an annualrent of 720 merks, to be uplifted by them out of the said lands of Sauchop; whereupon they are accordingly infeft; and upon their infeftment crave to get a decret for pointing of the ground. To stop this, Andrew Daw and Robert Wood raise a summons of reduction and declarator against Henry Hope, as assignee constituted by James Monypennie, son to Mr. James, to whom the bond was granted; *item*, Euphame Monypennie, and her husband, Mr. John Smith, minister in Edinburgh, and the rest of her brothers and sisters; before the commissioners for administration of justice: charging them to produce and exhibit the said contract, bond, or disposition, granted by Sir James to their fathers, with all infeftments, charters, &c. that have followed thereupon; *item*, to exhibit all rights, title, or securities of the said lands, granted by

King Charles I. or II. in their favours, or of any of their predecessors to whom they may succeed *jure sanguinis*; to hear them reduced, &c. and to hear decret given, that the said pursuers have the only good and undoubted right of property of the said lands, pure and free, without any burden of annualrents, or yearly duties or servitude, especially of this infetment of annualrent craved to be reduced; and so that they have good right, by intenting this action, to remove all impediments that may stop them in the peaceable possession of the said lands; *item*, that the said lands cannot be poinded by virtue of the said pretended infetment.

The government changing, this action, by a summons of wakening, is of new, again, in 1663, intented; and therein, for verification of it, their seasines are produced. Two terms being assigned to the defenders' procurator, for satisfying the production called for in the summons, he failyies: whereupon the term is circumduced against him; and decret pronounced, reducing the said writs, for not production.

*Act.* Mr. William Beaton. *Alt.* Mr. John Harper.

*Signet MS. No. 9. folio 3.*

1663. *November 26.* DAVID DICK, *against* The Tenants of LORD KIRKUBRIGHT, and of ROBERT MAXWELL of Orchartoune.

DAVID DICK, writer in Edinburgh, for divers sums of moneys addebted to him by Jo. Lord Kirkcudbright, and Robert Maxwell of Orchartoune, *in anno 1653*, comprises both their lands, all lying within the stewartry of Kirkcubright, and Sheriffdoms of Dumfries and Wigton. *In anno 1654*, he obtained himself duly infet in the said lands; whereupon, as having good and undoubted right to pursue this action, he raises a summons of maills and duties; charging them to pay to him their farms 1660, 1661, 1662; each of them at the rate of six chalders of victual, two chalders bear, two meal, and two oats, of the met and measure of Nithisdale, at twenty pounds the pound; and 600 merks of silver duty. The Lords finding the summons relevant, by reason of his seasine of the said lands, produced, grant a term to the defenders' procurators to produce them, to give their oaths anent the quantities libelled; which they failyieing to do, the Lords held them *pro confessis*, and gave furth decret, conform to the desire of the summons.

*Act.* William Yeaman. *Alt.* Mr. Jo. Cunyghame. D. Dick.

*Signet MS. No. 10. folio 4.*

1663. *November 27.* JAMES FRASER, *against* ALEXANDER MACKENZIE of Suddie.

KENNETH MACKENZIE of Gillichris, *in anno 1612*, in one bond, grants him to have received 500 merks; in another, L.400, from James Fraser, burgess in