

1665. July 11. LORD RENTOUN *against* The FEUARS of COLDINGHAME.

THE Lord Rentoun pursues a declarator, against the feuars of Coldinghame, to hear and see it found and declared, that he has good and undoubted right to certain duties paid forth of the said lands; and to hear the same decerned to be paid to him, from the year 1580, and in time coming; and particularly a threave of oats forth of every husband-land of the said lordship. In this cause, the pursuer and defender being ordained *hinc inde* to produce all writs relating to their lands, and that before answer; and the pursuer having produced several rights, as charters; and it being alleged by the defenders, that no respect can be had thereto, because there was no formal constitution of a right, in his person, to the duties libelled, to infer a servitude against; and that the writs produced are defective, through want of a clear progress from the first author to the pursuer:—

The Lords REPELLED the defence proponed for the defenders; and would not suffer them to propone any; in regard they had produced no writs at all; and ordained them to produce instantly what they have, and to depone thereupon.

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1665. July 11. JOHN RAMSAY *against* JAMES WILSON and OTHERS.

JOHN Ramsay, clerk to the hornings, as executor-creditor confirmed to umquhile Alexander Cunninghame, pursues certain persons for delivery of certain goods, confirmed as the proper goods of the defunct; which goods were hypothecated, by the defunct, to umquhile Mr James Aikenhead, who was creditor; and which debt he transferred to John Ramsay, and delivered the goods. And which goods were put in a cellar beneath the ground at the fight of Dunbar: but Mr Robert Byers having gotten knowledge thereof, did seduce John Ramsay's servant maid, whom he had left, *in anno* 1650, for preservation of his house in Edinburgh, and goods therein; and the said John Ramsay did not learn what became thereof. But now, after the decease of Mr Robert Byers, having learned that James Wilson, and certain other persons, had the said goods, he has intented action for exhibition and delivery thereof.

It was ALLEGED for the defenders, That they could not exhibit the goods, because they have received them from Mr Robert Byers, and had lent him money thereupon, with a resolute clause,—that, in case he did not pay the money at the term, the goods to be their own; wherein he having failied, they have disposed thereupon, and sold them to others: as also the said John did not instruct a sufficient interest or title to prove the goods were his; which he ought to do *in rei vindicatione*.

The Lords decerned in the exhibition against Wilson and ———, two of the havers, reserving all their defences against the delivery; and ordained Allan, and other of the defenders, to condescend whom to she gave the jewels, *et quando*.

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