

1672. *January 27.* AGNES BLAIR *against* JAMES WAIT.

MONIVAIRD, having given a wadset to Agnes Blair and her husband, in life-rent, of the lands of Whytbank, by virtue whereof she had been several years in possession; thereafter he did give a new wadset to James Wait of the said lands, wherein he was obliged to warrant Wait's right against the prior infestment, and to purge the lands thereof, and to enter Wait to the possession: after which he did obtain a decret of removing against the said Agnes for non-compearance, and did enter Wait to the possession; which decret being reduced by the said Agnes, she did pursue for the maills and duties of the lands for the whole years that she was debarred from the possession.

It was ALLEGED for Wait, That he could only be liable after citation and the reduction of the decret of removing, before which he was *bona fide* possessor by virtue of his infestment,—there being a decret of removing standing unreduced against the pursuer.

It was REPLIED, That the said decret being *funditus* taken away as if it had never been given, and the defender having taken MonivaIRD obliged to warrant him against the pursuer's right, he could not be ignorant thereof; and so was *in mala fide* to dispossess upon a decret for null defence.

The Lords did sustain the summons for the whole years since the decret of removing and the date of the citation in the reduction; and found, That, knowing the prior wadset, and that the pursuer's possession was not taken away but by a decret for null defence, he was *in mala fide* to enter, and was liable to the whole duties, albeit they were *fructus percepti et consumpti*.

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1772. *January 27.* JOHN ANDERSON *against* JAMES BELL.

ANDERSON, pursuing upon a comprising for the maills and duties of the lands therein contained, compearance was made for James Bell,—who ALLEGED, That he having likewise comprised, and having denounced the lands within year and day, which were suspended by Anderson's procurement, of purpose to delay him, his comprising ought to be drawn back to the date of the denunciation, and so repute to be within year and day of the first comprising, and so fall within the Act of Parliament.

It was REPLIED, That the suspension of the letters was at the instance of the common debtor; neither can it be said that it was raised *dolo malo*, albeit the pursuer had procured the same; because, the suspension being discussed, the letters of apprising were suspended *simpliciter*; in respect that they were raised for the whole sum contained in the bond, whereas Bell had discharged the half thereof under his own hand.

The Lords did prefer the pursuer to the whole duties; and found, That there being a just reason to suspend the comprising, it could not be drawn back, unless that Anderson's fraud and *dolus* had been otherwise made appear, and proven by his writ or oath; *quo casu* they would have sustained the allegiance.

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