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ward holdings. *2do*, Though that they held feu, yet this being an office, no act appoints confirmation of offices, which, even without sasines, may be granted and transmitted; but only of feu lands.

THE LORDS found no necessity of confirmation upon both the grounds fore-saids, or either of them. *See WARD.—SASINE.*

In the same process, though there had been many summonses raised, as in *anno* 1600, 1621, 1627, &c. yet the Lords would not sustain process for any by-runs, but only since the wakening now insisted upon was last raised, which was only within these three or four years; in regard he nor his predecessors had never been in possession, at least since the intending of the said processes, and had never obtained any decret.

*Fol. Dic. v. 1. p. 111. Gilmour, No 178. p. 128.*

1672. February 23.

GRAY against WATSON.

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In a reduction of land rights, it appearing by the pursuer's reduction, that he was clearly preferable, the defender was found liable to account from the citation.

GRAY having an ancient infeftment of Barbanoch from the Lord Gray, but his father having died when he was young, his tutor possess; and his tutor also dying in his pupillarity, the tutor's wife continued in possession. In the meantime Watson, who had married her sister, takes a new original right from the master of Gray, and comes to possession by the consent of his wife's sister without process. Gray, who was minor, having entered heir to his grandsire, and being infeft, Watson compeared and excepted upon his infeftment, and alleged the benefit of a possessory judgment, being seven years in possession, which the Lords sustained; whereupon Gray raised a reduction, and did reduce Watson's right, as being long posterior to his right; and the question arising, whether Watson should be liable for the mails and duties from citation, *litis-contestation*, or sentence in the reduction: It was *alleged* for Gray, that the only ground that could free Watson from mails and duties, was, that he was *bona fide possessor cum titulo, & fecit fructus perceptos suos*: And whensoever that ground ceaseth, the duties are due to the reducer who hath right, which is sometimes found to be from the citation, *litis-contestation*, or sentence; but here it must be from the citation, because the pursuer's right was produced and shown to the defender in the former pursuit of mails and duties, whereunto he had nothing to object, but the benefit of a possessory judgment; so that he cannot be said only to doubt or hesitate of his right, but to know clearly that he had no right, although he was secure, till reduction was intended, by the privilege of a possessory judgment: And as his possession was not *bona fide*, so it was vitious and clandestine, neither attained by authority nor consent, but by the collusion of his good-sister the tutor's wife; and Watson having lived within two miles, could not be ignorant, that Gray's predecessors were reputed heritable possessors. It was *answered* for Watson, That Gray being but infeft as heir to his grandsire, and of a long

time out of possession, he might lawfully take a right from the Master of Gray superior, who might have recovered the right of property *ad remanentiam*, or by recognition; so that the sight of the pursuer's right could not put Watson out of doubt of his own right. It was *replied*, That there was neither resignation nor recognition, nor did Watson propone any thing thereupon in the reduction.

THE LORDS found the mails and duties due since the citation on the reduction.

*Fol. Dic. v. I. p. III. Stair, v. 2. p. 76.*

\* \* Gosford reports the same case; giving the defender the name of Howison.

In a pursuit for mails and duties at Gray's instance, as infest as heir to his father in the lands of ———, holden of the Master of Gray, from the date of the citation of the reduction formerly pursued at his instance against Howison, wherein he had obtained decret, it was *alleged*, That the defender was only liable *post latam sententiam*, he being *bona fide* possessor, as being infest upon a charter granted to him by the master of Gray, who was infest in the said lands. It was *replied*, That the defender could not be reputed *bona fide* possessor, seeing the pursuer's father died infest, and had been long in possession of the said lands as heritor; and that, after his death, the pursuer's tutor had continued in possession during his lifetime, which was well known to the defender, who did marry the tutor's wife's sister, and by collusion made her to remove, and so did enter to the possession without any pursuit or decret obtained against the pursuer, who was minor; and, if he had been called, would have defended against any right granted by the Master of Gray, who was only superior, and could neither remove, nor pursue him for mails and duties.—THE LORDS did repel the defence, in respect of the reply, and found, that albeit where parties are *in probabili ignorantia*, and have a title, they are sometimes only found liable after sentence or litis-contestation, as to which they have a latitude according to the merits of the cause; yet, where the entry to the possession is not legal, *et viis et modis*, but by collusion, they ought to be liable as possessors *malæ fidei*.

*Gosford, MS. p. 252.*

1675. July 15.

FUMARTOUN *against* LUTEFOOT.

THOMAS DUNMUIR granted a disposition of the fee of half a tenement in the Canongate, to Janet Bartan his wife. There is now improbation thereof intented, at the instance of Janet Dunmuir, heiress to Thomas Dunmuir her granduncle, and John Fulmartoun her assignee, against Sarah Elder, daughter to the said Janet Bartan, and John Lutefoot her husband; which disposition was registered in the books of the Bailie-court of the Canongate. And the pursuer insisting for certification, the defender produced the extract, and therewith the register

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In a reduction and improbation of a disposition granted by a woman, and assigned by her to her husband in their contract of marriage,