

## PERSONAL OBJECTION.

---

1563. December 7. The LAIRD of INNERQUHARITY against OGILVIE.

**A**NENT the action pursued by the Laird of Innerquharity against John Ogilvie, and his wife, and James their son, anent the removing from certain lands, as they that were lawfully warned to remove therefrom, it was *alleged* by the said John, his wife, and their son, That they should not remove from the said lands, because they had tacks of the same to run. It was *alleged* by the said Laird, That he pursued the said John, his wife, and son, before the Sheriff, for the mails and duties of the said lands, conform to a letter of tack made to them by the said Laird, who swore by their great oath in the said Sheriff-court, and now bruik the same by reason of the said tack, because they had sworn, as said is, that they had such a tack. It was *alleged* by the said John, That he had not such a tack as was libelled by the said Laird; for the tack libelled bore, That the said land was set to the said John, his wife, and eldest son, albeit the tack set to him bore to him, his wife, and heirs male; therefore he had not mansworn that tack; whilk allegiance of the said defender, was repelled by the LORDS, in respect of the oath given in the said Sheriff-court calumniously, and ordained them to remove from the said lands, for the cause foresaid. Then it was *alleged* by the said James, son to the said John, That he was made assignee before these things alleged to the said tack, and therefore should not remove from the said lands; whilk allegiance, in like manner, was repelled, and the said James also decerned to remove for the cause above written.

*Fol. Dic. v. 2. p. 80. Maitland, MS. p. 145.*

1607. March 3. EARL of ATHOLE against LORD EDZEL.

THE Earl of Athole sought to have an interdiction loosed. Mr Thomas Hope for my Lord Edzel, one of the interdictors, produced horning to debar the pursuer *ab agendo*. THE LORDS found, That the interdictor, who was chosen for

No 1.

A party who had deponed in a Court, that he had a tack in certain terms, and possessed in consequence; was not, in a subsequent removing, permitted to defend himself by a plea founded on terms of the tack, contradictory to his oath.

No 2.

No 2. the parties' good and help, could not be allowed to use horning against him to debar him from obtaining the loosing of the interdiction; the standing whereof made him unable for lack of the consent of his interdictor to obey and fulfil the charges.

*Fol. Dic. v. 2. p. 82. Haddington, MS. No 1342.*

No 3. 1623. *March 4,* HERMISCHEILLS *against* STEVENSON.

HERMISCHEILLS pursued a removing from the lands of Hermischiells against Malcolm Stevenson, who *alleged*, That no process could be granted, because the pursuer's sasine was in September, after the Whitsunday of the warning; which allegiance, the LORDS found relevant, because the sasine proceeding not upon a retour, but upon a precept of *clare constat* of the Lord Torphichen.

*Fol. Dic. v. 2. p. 82. Haddington, MS. No 2800.*

No 4. 1627. *June 20.* L. TOUCH *against* L. HARDISMILNE.

No 4.  
No personal objection against the defender can supply the defect of a title to pursue.

L. TOUCH pursues a removing against Hardismilne and his tenants, the title of which pursuit was a sasine given to the pursuer's umquhile father, upon a charter granted to him and his heirs of the same lands libelled, by the same defenders, and a retour whereby the pursuer was served heir to his umquhile father therein, with a charge out of the chancellery by precept, charging the defender to give him precept of sasine upon that retour; but no further being proceeded upon by that first precept out of the chancellery, the LORDS found, That their title could not produce this action of removing, the pursuer not being seased, without which sasine he could not pursue removing; albeit the same was not only pursued against him who was author of his father's right, to whom he was heir as said is, and against his tenants only; and so whereby the pursuer *replied*, that the defender could not oppone to him want of sasine, which he wanted through his default, he being charged as said is to give him sasine, and being author of his father's right; which was repelled, and no removing found before he was seased.

Act. *Craig.*

Alt. *Belshes.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 82. Durie, p. 298.*

\*\*\* A similar decision was pronounced, 25th June 1668, Heriot against Town of Edinburgh, No 22. p. 6901. *voce* INFERTMENT.