

No 3. 1624. February 7. NISBET against KING.

IN an action pursued by Mr Patrick Nisbet against James King, advocate, a dial standing in the garden of Drydane, upon a fixed standart, was found to be comprehended in the contract of alienation of the lands, houses, yards, and pertinents of Drydane, as a pertinent of the yard, albeit it was only set upon a prick of iron fixed in the head of the standart, and that it might have been lifted off.

*Fol. Dic. v. 2. p. 26. Haddington, MS. No 2996.*

No 4. 1627. July 14. LADY BOYN against Her TENANTS.

IN an action of removing, betwixt the Lady Boyn and her tenants, the defenders *alleging*, that the pursuer was not specially infest in some particular lands, wherefrom she desired the defenders to be removed; and the pursuer *re-plying*, that they were part and pertinents of the lands contained in her sasine, and that the same lay contiguous together; and the defenders *alleging*, that they lay discontiguous, and had other lands interjected betwixt them whereon they specially condescended; the LORDS preferred the pursuer's reply, upon part and pertinents, and the lying of the same contiguous, to the defender's exception and duply upon discontiguity.

Act. Lawty.

Alt. Baird.

Clerk, Hay.

*Fol. Dic. v. 2. p. 26. Durie, p. 310.*

No 5. 1628. July 18. L. LUGTON against SOMMERVILLE.

IN an action, L. Lugton against Hugh Sommerville of Drum, for removing from a rigg of land, which Lugton alleged to be part and pertinent of his lands of Gilmerton, wherein he was heritably infest, and that the same was so bruiked by him and his predecessors, past memory of man, and possessed by them peaceably; and the defender *alleging*, that he was infest in another part of the lands of Gilmerton heritably, whereof the rigg libelled was part and pertinent, and which was so possessed by him and his predecessors, past memory of man, the pursuer was preferred in his reply, and the defender's exception repelled; but it would appear, that the pursuer ought to have condescended how he lost his possession, and after what manner the defender apprehended the same, and both parties ought to have been urged to dispute, and make these points clear.

Act. Stuart,

Alt. ———.

Clerk, Scot.

*Fol. Dic. v. 2. p. 26. Durie, p. 391.*