

1630. June 19. Mr WALTER WHITEFORD *against* L. JOHNSTOUN.

ONE Johnstoun having disposed some lands to Mr Walter Whiteford by contract, whereupon inhibition was served; and having thereafter disposed the same to the Laird of Johnstoun; the said Johnstoun and Mr Walter pursue the Laird of Johnston for the exhibition of the writs of the said lands, made to this disposer and his predecessors; wherein the LORDS found, that neither this disposer nor Mr Walter, by virtue of this contract and inhibition, executed before the acquiring of the Laird of Johnston's right, could have action to seek exhibition of the writs of the lands from the Laird of Johnston, who stood infest therein; albeit this right was acquired from the pursuer after Mr Walter his inhibition; for, he being infest in the land, so long as his infestment stood, he ought to bruik the land, and would not be compelled to produce the evidents at his instance who disposed the same, nor at Mr Walter's instance who was not infest, without prejudice to reduce upon the inhibition, in the which process the defender might be called to produce the same.

Act.* *Lermonth.*

Alt. *Stuart.*

Clerk, *Gibson.*

Durie, p. 519.

1662. November 14. CREDITORS of ANDREW BRYSON *against* His SON.

IN an account and reckoning betwixt the Creditors and Bairns of umquhile Andrew Bryson, the auditor being warranted to call all parties, havers of the said umquhile Andrew his count books before him, his son Mr Andrew being called and examined upon oath, depones, that he neither has them, nor had them since the intending of the cause, but refused to depone upon his having of the same at any time before, or upon his knowledge who had them.

THE LORDS having heard the auditor's report therearent, found that he ought not to be examined upon his knowledge who had them, but that he ought to depone if, at any time before the citation he had the same, and fraudfully put the same away, *quia pro possessore habetur qui dolo desiit possidere.*

Fol. Dic. v. 1. p. 282. Stair, v. 1. p. 140.

1664. December 15. FORK *against* LOUDOUN.

MR HUGH FORK being tutor of law, served to his brother and sister of a second marriage, pursues Mr Gavin Loudoun for exhibition of certain writs belonging to the children. It was *alleged*, That the defender is tutor-dative to the children, at least his brother, from whom he has the trust of the writs as

No 18.

A person infest found not obliged to exhibit to the person who disposed to him, or to an inhibitor.

No 19.

Oath *ex officio* anent having writs, was allowed to be given by a person, if they had been in his possession, and how he had put them away, but not if he knew who had them.

No 20.

A tutor at law found entitled to require exhibition of the pupil's writs,