

1632. February 1. CUNINGHAM *against* WILLIAMSON.

No 13.

IN an action of poinding of the ground for an annualrent, there is no necessity to summon any other party but the present heritor and the tenants, but not the heritor's author.

Auchinleck, MS. p. 161.

*** Durie's report of this case is No 115. p. 2238. *voce* CITATION.

1633. December 21. Lord WEMYSS *against* STEWART.

No 14.

A PROCESS of molestation, commenced before an inferior court, may, after advocacy to the Lords of Session, be turned to a process of declarator of property.

Fol. Dic. v. 2. p. 180. Durie.

*** This case is No 44. p. 2197, *voce* CITATION.

No 15.

1638. December 19. CORSER *against* DURIE.

PROCESS sustained to crave the lands to be adjudged upon a renunciation to be heir, and the defender also to be decerned for bygone rents, intromitted with by him, both in the same summons.

Fol. Dic. v. 2. p. 180. Durie.

*** This case is No 4. p. 44. *voce* ADJUDICATION.

No 16.

1638. February 22. BROWN *against* BROWN.

CONTRACTS cannot be registered, nor charges raised thereon at the instance of parties who are only consenters, the principal party being dead, but must be pursued by way of action.

Auchinleck, MS. p. 175.

No 17.

1662. February 7. ACHINBECK *against* M'LEOD.

IN an improbation at the instance of the Laird of Auchinbeck *against* M'Leod,

THE LORDS found that the improbation behoved to be continued, albeit the same had an ordinary privilege to pass upon six days, for the first summons, passed of course *periculo petentis*.

No 18.

Stair, v. I. p. 94.

1665. July 14.

Earl of ARGYLE against MACDOUGALS of Dumolich and Ziner.

THE Earl of Argyle having raised a double poinding, in name of the tenants of certain lands, calling himself, on the one part, and Macdougals on the other, as both claiming right to the mails and duties. Macdougals produce a decret of Parliament, whiereby they having pursued the late Marquis of Argyle, *alleging*, That he had obtained the right and possession of these by force, and oppression during the troubles, whereupon his rights were reduced, and they restored to their possession. The Earl of Argyle produced his sasine, upon the King's gift, with two dispositions of these lands, granted to his father, one *in anno* 1632, and another *in anno* 1639, and thereupon craved to be preferred. Macdougals produced a disclamation of the process, in name of the tenants, and alleged no process, because the tenants, who were pursuers past from the pursuit. It was *answered*, That their names were but used, that the parties might discuss their rights, and so they could not disclaim it, being ordinary to use tenants' names in double poindings. It was *answered*, That there was no reason that tenants should be forced to make use of their names to intervert their master's possession.

No 19.
A decree of Parliament found null by a multipointing without reduction.

THE LORDS found, that the tenants could not disclaim, especially the possession being but late, by decret of Parliament, and was contraverse.

It was further *alleged* for Macdougals, that there was nothing particularly libelled, as rents due by the tenants, and therefore there could be no sentence.

THE LORDS repelled the allegiance, and found the sentence might be in general to be answered of the mails and duties, as is ordinary in decreets conform.

It was further *alleged* for Macdougals, that seeing this double poinding was in effect now used as a declarator of right, no process thereupon, because in all declarators, law allows the defenders twenty-one days upon the first summons, and six on the next, that they may prepare, and produce their rights, and here there is but one summons on six days. *2dly*, No process, because Macdougals' being founded upon a decret of Parliament; my Lord Argyle produces no title, but only a sasine, not expressing these lands. *3dly*, Decreeets, especially of Parliament, cannot be taken away, but by reduction, and not thus summarily. It was *answered*, That my Lord Argyle insisted here for taking away the pretended decret in Parliament, and restoring the King and donatar to the possession of the lands, so that in effect it is not so much a declarator of right as a possessory judgment. And as for the title, it is sufficient to produce a sasine,