

in Culross, the said James grants the receipt of certain commodities belonging to Andrew, which James is obliged to transport to Scotland for Andrew's use. These goods being alleged to be in the possession of William Brown, brother to the said James, and Robert Blaw in Culross, and to be intromitted with and disposed upon by them; they are convened by the said Andrew Spruel for the prices. It was alleged for the defenders, That they had right to the goods from James Brown, for an onerous cause; in so far as the defender did employ and intrust the said James with a considerable stock for Stockholm, to bring home with the return thereof such commodities as he could best bargain for. He accordingly did bring home the goods libelled, and delivered them to the defenders as the return of their stock; neither did they know, or were obliged to know, any bargain betwixt the said James and the pursuer. It was answered, That the pursuer had *rei vindicationem* against any who meddled with his goods, the goods libelled being properly his own; and he was in the same condition as if the defenders had bought the goods in a market *a non Domino*; and the said James not being owner, but trusted by the pursuer, the defenders should seek their warrantice of James. It was replied, That James being employed *ut supra*, and having returned and delivered the said goods in lieu of their stock, they might lawfully and effectually intromit therewith as their own: and were not in the case of persons buying in markets in Scotland, who are obliged to take caution for their warrantice, otherwise they buy upon their own peril; but they are in the condition of persons who buy from a merchant's servant or factor, who, coming out of foreign countries, sells commodities to merchants at home, who are not obliged to examine whether the goods be the seller's or not, they buying and receiving them *bona fide*: nor is any man, buying goods out of a shop, obliged to inquire whether the shopkeepers have good right to them or not; but if any pretended right to the goods sold, he ought to pursue the seller, and not the receiver. The Lords, before answer, ordained the defenders to condescend and prove what goods they sent over seas with the said James, and upon what terms; but they inclined to judge, that, if it were proven that they sent them away with commodities for a return to be brought home, and that, accordingly, the goods libelled were returned and delivered,—they would assoilvie the defenders.

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1663. June 23. CHARLES WARDLAW *against* WALTER DALGLISH.

THE deceased William Wardlaw, being debtor to Walter Dalglish in a sum of money by bond, which was conceived in favours of the said Walter, and Mary Home, his spouse, in liferent, and Christian Dalglish, their daughter, in fee; with power, nevertheless, to Walter to dispoise thereupon at his pleasure;—upon this bond a comprising is led of the debtor's lands of Logie, in favours of the foresaid persons *ut supra*, without inserting of the liberty and power foresaid, in favours of the said Walter; whereupon they are all three infest. Thereafter, by a sale of a part of the comprised lands, Walter is satisfied; and yet, in his time, his wife and daughter are not denuded; whereupon Charles Wardlaw, son-in-law to William, pursues the wife and the daughter to denude themselves, in re-

gard Walter was satisfied. It was alleged, That they should be assoilyied, in respect, by the comprising, Walter was only liferenter with his wife, and could do no deed in prejudice of his wife and daughter. It was answered, That, by the bond, he had power to dispose upon the money, notwithstanding of the joint liferent of his wife and the fee in favours of his daughter; and that clause anent the power of disposal, in favour of Walter, ought to be holden as repeated in the comprising as in the bond,—the bond being the ground thereof, though, by negligence, the clerk has omitted the same; and parties not being obliged to look after such formalities, the clerk's negligence should not prejudice them, the matter itself being so clear. The Lords repelled the allegiance, in respect of the answer.

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1663. *June.* THOMAS WILKIESON *against* THOMAS CRANSTOUN.

THOMAS Wilkieson obtains a decret of removing against Barbara Sanderson, for removing from a burgess acre in Lawder; which was suspended by her and by Thomas Cranstoun in Lawder, (who was called to the giving of the said decret,) upon this reason, That Barbara is tenant to the said Thomas, who has disposition of the said burgess acre from his father, who had right thereto from his mother, and, by virtue of the said rights, [has been] above seven years in possession. Answered, Not relevant, unless the said Thomas or his father were infeft; whereas the charger is infeft. Replied, That any infeftment the charger has, is only upon an apprising, whereupon he obtained letters of horning and compelled the bailies of Lawder to infeft him: which being done *superabundanter*, cannot prejudice the defender's right, which is sufficient without a seasine; because he offers himself to prove, that the constant custom of the town of Lawder, among the burgesses, is, to transmit their rights to burgesses acres by naked dispositions and acts of the Town-Court; concerning which acres there are divers other privileges singular, and not elsewhere in any other burgh; for there being of old disposed, by the king, 150 acres to 150 burgesses of Lawder, they were disposed with this quality, that there can be no more or fewer burgesses than there are burgess acres; and no burgess can possess more than one; and they are not transmittable to any but to a burgess, who is never infeft, but bruiks, by an Act of Court, with a naked disposition. The Lords, before answer, ordained the charger to condescend whether the person from whom he comprised was infeft or not.

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1665. *January.* WILLIAM GRAHAM of BLUETWOOD *against* JOHN and WILLIAM BROWN.

JOHN and William Brown having comprised the lands of Overharcleugh from Robert Johnstoun *in anno* 1655, and William Graham of Bluetwood having comprised the said lands within year and day; he pursues the first comprisers for