

then, *in anno* 1628, assigns the said bond, with the diligence done thereon, to John Arthur of Newton-Arthur. About this time the said William dies. The assignee charges James Houdon, his son, to enter heir to his father, and obtains decret of transferring against him, declaring that what right, action, title, or process, Patrick Whytelaw, his cedent, would have had against William Houdon, the same the Lords grant to him against William's son. *In anno* 1648, John Arthur the assignee dies. His son, Mr. Jo. serves and retours himself heir to his father, confirms his father's testament, and gets himself nominated his executor; then assigns this debt to his brother Alexander: who raises now a summons of transferring, craving the said debt to be transferred in him *activè*, and in the said Ja. Houdon *passivè*. For verifying the summons there is produced, first, the principal bond; then the decret of registration and letters of inhibition served thereon; then the assignation made to Jo. Arthur; then the decret of transferring obtained at his instance; then the extract of Mr. Jo. retour to his father, under the subscription of Sir Jo. Scot of Scotstarvet, then director to his Majesty's chancellery; then his father's confirmed testament, and then his brother Mr. John's translation of it over on him: all which the Lords finding to prove the summons relevantly, they transferred the same by their decret.

*Act.* Mr. George Norvell. It's in absence.

*Signet MS. No. 21, fol. 7.*

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1663. *December 5.* ARCHIBALD and ALEXANDER STEWART *against* MARGARET WARDLAW, ROBERT PITTILLO, WILLIAM BAILLIE, and OTHERS.

THE tenants of Killernie, Bandrun, and Steilend, lying within the regality of Dunferling and sheriffdom of Fyfe, raise a summons of multiplepinding against Margaret Wardlaw, relict of Lieutenant-General William Ruthen and Mr. Robert Pittillo, her spouse, for his interest, on one part; Archibald and Alexander Stewarts, brothers to the laird of Rossayth, on the second; Earl of Tweddale, on the third; George Wardlaw, brother to the laird of Pitrevie, on the fourth part; Mr. William Bailzie, writer in Edinburgh, on the fifth part; and Mr. John Anderson, minister at Sauching, (within which parish the lands lie,) on the sixth part: summoning them to compear before the Lords, &c. to hear and see it declared which of the said persons has best right to the maills, farms, and duties of the said lands; that the said pursuers may make payment of them to them, and that the rest may be discharged of all calling, troubling, pursuing, or arresting the said tenants for the same. In this action compearance is first made for Archibald and Alexander Stewarts, who, for instructing their right and interest to the maills of the said lands, produce two bonds, containing precepts of seasing, granted by the said L. G. Ruthen and Margaret Wardlaw, his spouse, to the said two brothers, for certain great sums of money contained in the bonds, with two seasings (one taken by each of them) following thereon, with a summons of pinding of the ground, at their instance, against William Ruthen, now proprietor of these lands, son and heir to the [said] L. G. Ruthen, and his mother M. Wardlaw, liferentrix thereof, and her husband for his interest.

Compears, by his procurator, Mr. William Bailzie, and ALLEGES, he ought to be preferred to the said Archibald and Alexander Stewarts, because he has right by disposition made of the said lands to his father, James Baillie, long before their rights.

REPLIED for the brothers, that Mr. William Baillie ought to be repelled, because they offered them to prove that L. G. Ruthen, their author, was seven years in possession, which puts them in *judicio possessorio*, they succeeding to him; and so must have a sentence for pointing of the ground, and be preferred to Mr. William. To the which it was

DUPLIED, by Mr. William, that whatever possession the said L. G. Ruthen their author had, it was violent, at the least vicious, because apprehended after that his author had obtained decret of removing from the said lands. Where-to it was

TRIPLIED, that no respect can be had to any decret of removing obtained at the instance of Mr. William's author, because their author, L. G. Ruthen (who was both infest in the said lands, and was seven years in possession thereof,) was not called thereto. Likeas, in fortification of what has been said, it is offered to be proven that James Bailzie, Mr. William's father and author, did before his decease denude himself of any right he had to the said lands in question, in favours of L. G. Ruthen, their author. This reply and triply for Archibald and Alexander Stewarts, the Lords found relevant to be proven *scripto*, notwithstanding of the allegiance and duply made in favours of Mr. William Bailzie; and therefore assigned them a term for proving the same by production of such writs, documents, and others, as they would judge necessary to use. And because the writs whereby they intended to prove their said reply and triply were not in their own hands; therefore they protested for an incident diligence against the havers of the same: which protestation the Lords admitted. Whereupon the saids Archibald and Alexander raise a summons of incident diligence against Mr. Robert Pittillo, advocate, and his spouse, M. Wardlaw, Mr. James Winrahame of Wouston, and Robert Leggat, writer in Edinburgh, one or other of them; either as having had the said writs, or as having fraudfully put them away; to exhibit all writs or evidents granted by whatsoever persons, specially by Bruce of Alboth, Inglis of Ingliston, Catharine Bennet, &c. (here is a long catalogue of writs deduced) to the said L. G. Ruthen of the said lands of Killerny and others, that thereby they may prove their said reply and triply, admitted to their probation, and that they being found to have best right to the said lands, may keep and use the same as their own proper writs and evidents: all which they referred to their oaths of verity *simpliciter*. All which the Lords found most relevant, and therefore they granted a term to the pursuers for summoning them to that effect; with certification that they failyieing, they should be holden for confessed; which all being done accordingly, and they cited personally by a messenger at arms, they failyied to compear to give their oaths; whereupon they were holden as confessed, and ordained to exhibit and produce the said writs called for, under the pain of horning, to be granted on fifteen days, &c.

In the action of multiplepointing, for Archibald and Alexander Stewarts, compear Mrs. George Norvell, and William Maxwell; for Mr. William Bail-

lie, compears Mr. Jo. Harper: in the incident, the pursuers compear *ut supra*. *Alt.* Mrs. Robert Pitillo and Mr. John Eleis.

*Signet MS. No. 22, fol. 7.*

1663. *December 5.* JAMES HAMILTON *against* PATRICK CAMPBELL of Duntroon's TENANTS.

IN April 1657, Pat. Campbell, elder of Duntroon, as principal, and John Ca. fiar thereof, his son, as cautioner, bind them to content and pay to Robert Hamilton, burgess of Glasgow, the sum of L.160. This bond is registrate in the Sheriff-Court book of Inverarie in 1658; then he assigns it to James Hamilton, also burgess there, who immediately thereon raises letters of poinding and horning, containing arrestment, whereby he arrests in the said Duntroon's tenants' hands the farms and duties of their lands for the crop and year of God 1662; then pursues for making forthcoming, calling also Duntroon for his interest. For verifying the summons there is produced the registrate bond, the assignation thereto, the letters of poinding, horning, and arrestment, duly executed, raised thereon; and for the remanent points of the summons not verified nor instructed by the writs produced, refer them to the defenders, (in whose hands the victual is arrested) their oaths of verity. Whereupon their procurator takes a day to produce them for that effect, and protests for a qualified oath; the pursuer's procurator protests in the contrary. They not compearing at the day, the term is circumduced against them, and they ordained to make the said victual arrested forthcoming to the pursuer, in payment to him, as assignee, of the sums of money contained in the said bond.

*Act.* Mr. Robert Sinclair. *Alt.* Mr. George Mackenzie and William Braidie.

*Signet MS. No. 23, fol. 8.*

1663. *December 5.* ALEXANDER BALNAVES, Minister of Tippermuire, *against* GEORGE MURRAY of Tippermuire.

IN anno 1669, there is a contract of excambion past betwixt George Murray of Tibbermuire, and Mr. Alexander Balnaves minister there: whereby George binds and obliges him to possess the minister in the yearly duty and avail of eight acres of land; and the minister obliges him to procure from the presbytery of Perth a right or disposition of the old glebe of the parish of Tippermuire to the said George. *In anno* 1662, the minister registrates the contract, and summons Tippermuire to perform his part of the contract, and obtains decret against him; whereupon he raises letters of horning, charging him to obey the said decret, that ordaining him to pay to the charger the yearly duty of eight acres of land conform to that contract. Thir letters Tippermuire suspends on thir reasons: *1mo*, Because the foresaid charge is altogether general, only for two years duty of the said eight acres of land; neither condescending upon the species or kind of the said duty, whether victual or money, nor yet on the quota or quantity thereof, nor