

To which it was ANSWERED, *Non relevat*, unless the defender will say he stands infest, and, by virtue thereof, in possession, by uplifting the maills and duties; in regard an apprising and charge against the superior is not sufficient interest to pursue a real action. Neither can it be sustained, by way of defence, to impede a removing, at the pursuer's instance, against his own tenants, who stand infest; especially the superior having suspended the charge, and Mr Roger having used no diligence for discussing thereof.

In this interlocutor the Lords were divided, and thought it disputable, whether a comprising, with a charge against the superior, and seven years' possession, were sufficient to maintain the tenant, in a removing, against one that stands infest; and, therefore, it was not decided: but recommended to the Lord President to agree the parties.

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1665. January 5. THOMAS PAMPIN against JAMES and WILLIAM MELVILLE.

THOMAS Pampin, Englishman, pursues James and William Melville for £500 sterling, conform to an English bond.

It was ALLEGED Absolvitor, because they did make the pursuer assignee to their proceedings of their adventures in the Barbadoes and Geneva, towards payment of the sums pursued for. Conform thereto, the pursuer has intromitted with as much as will satisfy the sum acclaimed; at least the major part thereof; and therefore the pursuer ought to count and reckon.

To which it was ANSWERED, Ought to be repelled, in respect the pursuer's bond is clear and simple; and the allegiance is only relevant *scripto vel juramento partis*.

The Lords found the allegiance relevant, founded upon the assignation, probable by the pursuer's oath; and ordained them to give in a special charge of the particulars assigned; at which time the Lords would determine the manner of probation of quantities and prices intromitted with by the pursuer: for it was then alleged, that, as the assignation was probable by the pursuer's oath, so [is] his intromission with the quantities and prices, and not by witnesses; albeit the bond was an English bond, and granted in England.

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1665. January 7. The EARL of ROXBURGH against WILLIAM MOOR.

IN a removing, pursued by the Earl of Roxburgh against Mr William Moor, from some kirklands in Moorbottle,—

It was ALLEGED for the defender, That he had a disposition of the several lands from the vicar, by virtue whereof he has bruiked and been in possession these forty years bygone; which must defend him *in possessorio*, and is equivalent as if he had a tack of the lands.

The Lords repelled the allegiance founded on the disposition, charter, and forty years' possession, in regard there was no seaisine produced: and found the