

1670. *July 16.* My LORD RAMSAY and his CHILDREN *against* The EARL of WIGTON.

THIS was a pursuit at my Lord's instance, as tutor and administrator of the law to his children, and at their instances as nearest of kin to the deceased Sir William Fleiming who died at London, against the Earl, as he who has intromitted with the said Sir William his moveable estate in England; for making count, reckoning, and payment to them of the same, as being nearest of kin.

The *first* DEFENCE was, ye have no interest to crave this count unless you can show a right of administration in your person. ANSWERED, Ought to be repelled, because the Earl, defender, has obtained the administration already from the Prerogative Court in England, and so must be countable.

The *second* was, They offered them to prove that Sir William, by a nuncupative testament, did nominate the defender his sole executor; which is valid by the law of England, and must be sustained for giving him interest in the English estate; and this they offered to prove by witnesses. This was FOUND RELEVANT.

Then *3tio*, *Esto*, he were the person who has procured *jus executionis et administrationis*, then it is offered to be proven, by the custom and law of England, that an administration is such a title as it makes him noway countable, neither to the nearest of kin nor any others; and so he must be assoilyed from this pursuit. This was found relevant to be proven by the Judges of that Court, and a commission was granted to that effect.

*Act.* Wallace and Leirmont.

*Alt.* Lockhart.

*Advocates' MS. No. 80, folio 82.*

1670. *July 16.* The LAIRD of Chesters *against* KER of Lintoun.

IN this action an apprising being quarrelled as null, on this reason, that it was deduced on an heritable security bearing requisition, and that no requisition was made: to this it was ANSWERED, That they offered to prove required.

REPLIED, Their requisition cannot be respected, because past from, in so far as he took annualrent for terms after the requisition, which made the security (made moveable by the requisition) return again to its own nature.

DUPLIED, The taking of annualrent made not the sum heritable again, because the contract bearing an obligation on the debtor for payment of annualrent to the creditor as well not infest as infest, any annualrent he took after the requisition, it was by virtue of the personal obligation; and he does not ascribe it to his infestment. *2do*, He has homologated the apprising in so far as he has accepted or received discharges of the rents of the land relative to this apprising.

*Vide supra, No. 29, [21st June, 1670,] in fine.*

*Act.* Lockhart and Pringle.

*Alt.* Sinclair.

*Advocates' MS. No. 81, folio 82.*