

1671. *January 26.* CARSE *against* CUNYGHAME.

IN this action the Lords FOUND, That albeit the genuine and natural action that flows from an infeftment of annualrent, is a pointing of the ground, and a decret for the same; yet that an annualrenter might compear in a process for mails and duties pursued at the instance of other creditors, and be admitted for his interest, and take forth a decret for mails and duties against the same tenants.

In this same cause, they ordained doctor Cunyghame to count and reckon with the pursuer, anent his intromission with the rent of the lands acquired; and that being done, they would give their answer upon all.

This was thought favourable for Carse, for what he has meddled with over and above the annualrent of the money, (which was L.26,000,) these fourteen years in the mails of these lands, it is feared he be ordained to refund it.

*Advocates' MS. No. 109, folio 86.*

1671. *January 26.* GRAHAM *against* SIR JAMES MURRAY of Skirling.

*IN anno 1652*, my Lord Panmuire comprises Sir James Murraye's estate for certain sums of money. Before the deducing of this comprising Sir James had granted a wadset right of the lands of Skirling, for a certain sum, to one Leviston; which right was afterwards acquired by his brother Sir Robert, and transferred over by him to his nephew James. My Lord Panmuire dispones the grounds whereon the apprising was led, to his son Harie Mauld. Harie makes it, with all the rest of his estate, over to his lady, now married to Douglas of Gogar. She assigns and dispones it to this Grahame, who, as having right by progress to the apprising, had also right to the reversion of that wadset given to Leviston; and upon this progress uses an order of redemption, and pursues a declarator of his order.

Against which it was ALLEGED, *Imo*, That all parties having interest were not called, *viz.* my Lord Panmuire. *2do*, Harie Mauld's right can never be found valid to sustain this order, it being only a clause of substitution, making that sum contained in Sir James Murraye's bond payable to Harie, after the decease of the Earl his father: now his father, in his own lifetime, led the comprising in his own name, and never made any disposition of it to Harie; and what way can Harie, or any deriving right from him, pursue a declarator on this apprising, to which he can show no right in his person. *3tio*, The bond wherein Harie was substitute, bears an express power to the father to uplift the same, to discharge it, dispose of it, or alter it at his pleasure, any time in his lifetime; but *ita est* this comprising must be repute an innovation of the same, *hoc maxime attento* that he apprised the lands to himself, and his heirs whatsoever, which is a most evident revocation of the substitution; and so the right of the apprising must be in my Lord Panmuir's person as heir.