

1672. *June 5.* MUNGO WOOD *against* ROLLO of POWHOUSE.

MUNGO Wood, merchant in Edinburgh, pursues Rollo of Powhouse, as heir to his father, for payment of a merchant accompt, current for several years, whereof the last articles were within three years of the pursuit. The Lords found the whole probable by witnesses. And, at the advising of the cause, the whole articles of the accompt being fourteen, they were all proven by two witnesses; except some few in the middle of the accompt, not exceeding ten pounds Scots, which was proven but by one witness. And, seeing umquhile Powhouse died shortly after the taking on of the account, so that his oath could not be taken, the Lords took the pursuer's oath of supplement, and decerned for the whole.—One of the witnesses was the receiver of the goods, and the other had been the merchant's servant at the time, who gave them off.

*Vol. II, Page 83.*

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1672. *July 16.* The EARL of EGLINTOUN *against* The LAIRD of GREENOCK.

THE Earl of Eglintoun insisted in the cause debated the second of July instant, against Greenock, for declaring the avail of the Earl of Mount-Alexander's marriage; who held the land, ward of Eglintoun; and gave a wadset-feu thereof to Greenock, with the Earl's consent; which the Lords found to exclude the Earl from burdening Greenock's interest of these lands with the marriage. The Earl now further alleged, That Greenock's right, being but a wadset, cannot have the benefit of the feus allowed by the old statute; and which, by the statute 1606, are only approven when the superior confirms or consents; because the said old statute mentions only proper feus, which are perpetual locations; and where there is a competent feu-duty reserved, which is always interpret to be at least the new retoured duty: But Greenock's right is not perpetual, but under reversion; and, albeit it hath a feu-duty of L. 40, yet it is discharged. It was answered, That, the old statute hath no distinction of feus, whether redeemable or not; and that there is no question but redeemable feus would have been valid before the Act of Parliament 1606; and there is here a competent feu-duty, which albeit discharged, yet it is with the superior's own consent. The Lords found this feu, though under reversion, valid to exclude the ward and marriage, in so far as concerned the wadsetter's right consented to: except to the feu-duty discharged, which they found a necessary consequent of the feu itself; and that the consent to the discharge thereof could only extend to the sub-vassal, but not as to the superior, during the ward, in respect that the old statute did only allow feus with a competent feu-duty: And found, That the superior might declare the avail of the marriage as a debt against Mount-Alexander; and that therewith he might burden the feu, as to Mount-Alexander's right, and might obtain the wadsetter to restrict, and might redeem or apprise the reversion.

*Vol. II, Page 102.*