

The Lords found personal bonds, whether for payment of debts, or relief of cautionry, not a sufficient title to reduce a disposition of lands granted by the debtor, although no infeftment had followed thereon.

No. 48.

Forbes, p. 336.

* * This case is in opposition to what was decided in the case of Mackenzie against Campbell, No. 45. p. 16099. *supra*, and in that of Forbes against Earl of Aberdeen, No. 7. p. 15003. *voce* SUNDAY.

1710. *January 10.*

HENRY BOTHWEL of Glencorse, *against* JOHN TROTTER of Mortonhall.

No. 49.

In the action at the instance of Glencorse against Mortonhall, for payment of £.7 11s. Sterling, contained in a precept drawn by Alexander Trotter upon the defender, his brother, payable to Alexander Bothwel, merchant in Edinburgh, the pursuer's brother, dated September 7, 1688, the Lords found, That the pursuer being decerned executor to his brother, and having confirmed his testament, needed not a licence to pursue before the commissaries, for payment of another debt not confirmed.

Forbes, p. 386.

1713. *January 28.*

WILLIAM M'PHERSON, Writer in Edinburgh, *against* JOHN M'PHERSON of Dalradie.

No. 50.

William M'Pherson having adjudged the lands of Invereshie, upon a bond granted to him by Mr. James M'Pherson, apparent heir to Elias M'Pherson of Invereshie, for the said apparent heir's behoof, and charged the superior to enter him, he William M'Pherson pursued a reduction and improbation of all rights in the person of John M'Pherson affecting the said lands.

Alleged for the defender: He cannot take a day for producing any writs whereon infeftment had followed; in regard the pursuer stood not infeft in the lands, nor is the charge against the superior equivalent to infeftment in this process more than in a removing, albeit *fictione juris* it be effectual in some particular cases, as for bringing in equally adjudgers within year and day of the first effectual adjudication, December 1683, Brodie against Elphinstoun and others. And though a charge against the superior be equal to an infeftment *quoad* him, for excluding him from the casualty of non-entry, yet as to third parties the rule of law, *nulla sasina nulla terra*, still obtains; December 14, 1627, Beg against Baillies of Lanark, No. 14. p. 2704.; June 24, 1681, Oswald against Douglas and Deans, No. 56. p. 6650.; January 20, 1665, Little against Nithsdale, No. 26. p. 5194.; nor can it be pretended, that an adjudger who hath charged the superior, hath done all in

A charge against the superior upon an adjudication, found sufficient to entitle the adjudger to reduce real rights clothed with infeftment, though the adjudication was led by a trustee for the behoof of an apparent heir upon his own bond for his own behoof, and he was not served heir and infeft.