

1748. June 16. DUGUID *against* FARQUHARSON.

No. 70.

A person not infeft may maintain his possession, and pursue an action of molestation, and for declaring that his neighbour has no right to make high-roads, or pasture on his grass or muirs, &c.—See APPENDIX.

*Fol. Dic. v. 4. p. 377.*

1749. February. PAXTON *against* HUNTER.

An assignee may competently pursue in name of his cedent; but if the process be not well founded, when raised in his own name, his cedent's compearing and concurring will not supply the defect.

And therefore, in this case, where Paxton, upon a bare minute of sale from the proprietor, pursued a removing in his own name, he was found to have no title in his person to pursue such process, nor was his author's compearing and concurring found sufficient to support the action, in respect there was no summons in his name.

*Kilkerran, No. 6. p. 581.*

1749. June 16. CRAWFURD of Crawfordland *against* WILLIAM CRAWFURD.

John Crawford of Crawfordland disposed his estate, reserving his liferent, to John his eldest son; having before disposed the moveables he should have at his death to his sons William and Andrew, reserving power to alter; and on death-bed revoked this disposition, and disposed them to William.

John, the eldest son, pursued William to account to him for the heirship moveables, which could not be disposed on death-bed.

The Lord Ordinary, 22d December, 1748, "sustained the defence, that the heirship moveables were disposed to the defender by the defunct: And in respect of the former disposition by the defunct in favour of the defender, and his brother Andrew, found, that the last disposition was not reducible *ex capite lecti*."

Pleaded in a reclaiming bill: A general disposition of moveables does not comprehend heirship moveables; or if it does, this deed is revoked, the disponent having expressly revoked all deeds in favour of any other person; so that it can only support the defender's claim to the one half, to which he was thereby provided.

Answered: The revocation is not in favour of the pursuer; and the disposition is onerous, bearing to be for services performed, and which it is notorious he did

No. 71.

If an action raised in the name of an assignee without a sufficient title, will be validated by the concurrence of the cedent?

No. 72.

A person disposing his heirship moveables, and on death-bed revoking, and disposing them to another, the revocation was not sustained to give access to the heir to reduce.

No. 72. perform: Besides, the defunct having disposed his estate, did not die a Baron; and his heir is not entitled to heirship moveables.

The Lords adhered.

Act. *H. Home.*

Alt. *Boswel.*

*D. Falconer, v. 2. No. 68. p. 74.*

1750. July 11. EARL of CASSILIS *against* The TOWN of WIGTON.

No. 73.

A declarator sustained, that the pursuers were not liable in certain tolls for passing through the defenders' grounds.

The Earl of Cassilis and other gentlemen insisted in a declarator against the burgh of Wigton, and other burghs, and against sundry particular heritors, That they were not liable in any tolls for cattle passing through these towns, or by certain roads or bridges leading through their grounds, or those of the other defenders.

Objected: The defenders have grants of tolls; and the pursuers are insisting in a reduction and improbation of them, which they have no title to pursue; and they are not bound to produce their rights; and the declarator libelled, that the pursuer or other lieges are not subject to any tolls, is only a consequence of the improbation. They have no title to pursue this general declarator for the lieges; and it ought not to be sustained for themselves, as no absolvitor can proceed upon it; and they are obliging the defenders vexatiously to shew their writings: But if any unjust toll is asked of any in particular, he may in a proper way obtain remedy against it.

Answered: The pursuers do not insist in any conclusion of improbation or general conclusion of declarator, but on their own right of immunity, which is competent to every man; and there is in the summons a distinct conclusion for that purpose, without any connection with, or dependence upon, the improbation.

The Lords sustained the pursuers' title to pursue the declarator libelled.

Act. *W. Grant & Lockhart.* Alt. *R. Craigie & Haldane.* Reporter, *Justice Clerk.*

*D. Falconer, v. 2. No. 146. p. 172.*

1752. June 30.

ANDERSON and Others *against* The MAGISTRATES of RENFREW.

No. 74.

The citizens of a burgh are entitled to call their Magistrates to account for their administration.

John Anderson and others, burgesses of Renfrew, raised a reduction of a long lease of the common property, which the Magistrates and Town-Council had granted.

The Magistrates and Town-Council objected to the title of the pursuers, and pleaded, That private burgesses cannot compel their Magistrates to render account of their administration. The abuses which may prevail in the management