

the pursuer, notwithstanding that it was alleged that the same was null, being of kirk-lands, not confirmed; which allegiance was repelled; and found, that there was no necessity to reply upon confirmation, seeing, if there was no confirmation, then the right of the lands pertained to the lord of erection, who, by the said precept of *clare constat*, was denuded; and he opposed not that nullity, and so the right was sustained, without necessity of confirmation, specially against the excipient, who alleged no right in his person of the lands libelled; and which, the excipient contended, he had no necessity to allege, seeing it was sufficient to him to exclude the pursuer's title, upon a nullity statuted by law, and which was not elided by the precept of *clare constat* granted by the lord of erection, who has not given to the pursuer his right to the lands, by an original security flowing immediately from him, but only has received the pursuer, by a precept of *clare constat*, as heir to his forebears, which of necessity requires that his forebears should have had a lawful right; and so the defender alleged he might oppose against the lawfulness of that right, in respect of the said defect. Which allegiance was repelled.

*Act. Cunninghame. Alt. ———. Scot, Clerk.*

*Page 154.*

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1624. *November 27.* A BAXTER in Leith *against* HENRY MACKESON.

IN an action, pursued by a baxter of Leith against Henry Mackeson, for payment of the price of bread furnished to his house, by the space of one year, and received by the defender's daughter, from the pursuer, extending to an hundred pounds;—the Lords found that this action, and the like, ought not to be sustained, in respect of the danger which might ensue thereupon, *viz.* that masters might be convened, if this were sustained, for many years' furnishing, either taken on by their servants or bairns, without any warrant or direction, or when the master might have given to his servants, or others who had the charge of provision of his house, full satisfaction to do the same; which payment, if the said servants should bestow otherwise than for satisfying of these who had made the furnishing, it were against reason that the master should be convened therefor, except that the master himself had directed the furnishers to furnish his house, and to answer his servants; in which case, if he so commanded, then he ought also to have seen the furnishers paid. But there being no direction given by the master, to these who made any furnishing, the Lords would not sustain any such pursuit moved against them; albeit it was alleged, in this action, that the daughter, who had received the bread furnished, was in use, divers years before, to receive and take, for the defender's house, the whole furnishing and provision thereto, both in bread from the pursuers, and other necessaries thereto, from divers other persons; likeas he replied, that he offered herewith also to prove, that the whole bread libelled was really received within the defender's house, and applied to his own use. Which was not respected, nor the action sustained.

*Act. Craig. Alt. Hope. Gibson, Clerk. Vid. 21st June 1634, Sir James Hamilton.*

*Page 155.*