

he might maintain his possession ; and he was not rebel the time of his intromission ; and, by his becoming cautioner for the relict decerned to remove, he could not ascribe the possession to himself, which, *re vera*, pertained to the said relict, who had a pretended title of liferent. Which allegiance was repelled, and the pursuit sustained, in respect of the rebel's possession, offered to be proven at the time of the warning made to the relict, and sensine, and of the crop libelled : and it was not found necessary to allege that he possessed by virtue of a right to the lands libelled ; for the Lords found that the corns, being sown after a decret of removing, by another person against whom no decret was given,—albeit the person who did sow the same had no right to the lands wherein they were sown, and that his possession could not have been maintained, if he had been pursued either to remove or as succeeding in the vice,—yet that the said corns pertained to him who sowed the same, and consequently to the donatar to his escheat ; and that the same could not be intromitted with by him who obtained the decret of removing, the same not being given against the party who sowed the land ; and that his entry to the possession, by virtue of charges to the sheriff thereupon, could not give him right to meddle with the corns growing thereupon pertaining to any other person, than that person against whom he had received the sentence of removing.

*Act.* Neilson and Mowat. *Alt.* Stuart. Gibson, *Clerk.* *Vid.* 21st November 1628, Bruce *against* Bruce.

Page 414.

1629. January 31.

MAWER *against* HADDEN.

A DECREET dated and given the 27th of December 1628, by the Provost and Bailies of Edinburgh, being desired to be reduced, because it was given in the time of Yule vacation, which was *feriot*, and wherein no judicial act ought to be done ;—this reason was not sustained, but the decret found well given, because the decret was desired to be reduced by him who was pursuer of the cause wherein decret was given ; for, albeit absolvitor was given to the defender, by reason the pursuer failed in probation, yet, seeing the pursuer then insisted in his pursuit, the Lords found he could not reduce the same upon that reason, no more than the defender could, if sentence had been given against him compearing, and that no dilator had been alleged before the sentence.

Page 421.

1629. February 10.

FALCONER *against* BLAIR.

It was questioned, if the creditor to a defunct, by an heritable bond, might seek payment thereof from the defunct's executors, before the heir were first pursued therefore, as the pursuer contended ; who affirmed that the heir, specially he being responsal, ought to pay the defunct's heritable debt, as the executors are obliged to pay the moveable : even as the executors have no right but only to the defunct's moveables ; and the heir, to the defunct's goods immoveable,