

1663. *January 16.* EARL of ROXBURGH *against* A MINISTER.

No 62.
The Court of
Session com-
petent to
judge of the
nullities of
a decree of
the commis-
sion for plan-
tation of
kirks.

IN a review of a decret at the instance of a Minister against the Earl of Roxburgh; the point in question was, whether or no the Judges for the time, or now the Lords of Session, were competent to discuss this nullity, of a decret of locality, by the commission for plantation, in that it called the Earl's lands expressly designed, to be his lands, and he was not called.

THE LORDS found, that albeit they would not decide upon the nullities of the decreets of the commission competent by way of reduction; which behoved to be before the commission itself; yet this nullity being palpable and competent by exception, or suspension, that they might thereupon suspend *simpliciter*, the decret of the commission.

Stair, v. I. p. 158.

* * * This case is reported by Gilmour, No 39. p. 2195. *voce* CITATION.

1665. *February 3.* SIR JOHN FLETCHER, Supplicant.

No 63.
The Lords
appointed
two advo-
cates to be
assessors in
an apprising.

SIR JOHN FLETCHER having bought the lands of Crainstoun, and finding that there was an apprising to be deduced thereof for his authors debt, which might cost him trouble; he craved assessors to be appointed by the Lords, who, considering the matter amongst themselves, it carried by the plurality of one or two, to name two advocates assessors, but many were on the contrary, conceiving the example of it would be of great inconveniency, seeing apprisings were not with continuation of days, and if parties compeared, and *alleged* they were infest, yet there may be inhibition, anterior reversion, or trust, or nullities in their right; and if these were denied, they behoved to be instructed, and so terms of probation run, while in the mean time the anterior diligence of others, apprisings in the country before the Sheriff would prevent them; and it would hinder any apprisings ever to be deduced at Edinburgh; and it were hard to put creditors, who knew not their debtors charter chest, to dispute their rights as in an executive process.

But the LORDS inclined, that Sir John's infestment should be rather produc- ed, and reserved out of the apprising, than the apprising stopped.

Stair v. I. p. 263.

1666. *November 3.* MERCHANTS in DUNDEE *against* SPRUCE, Englishman.

No 64.

SOME merchants of Dundee having sold a considerable quantity of wines to one Spruce, an Englishman, they pursue him for the price; and because he