

the Act of adjournal denouncing him fugitive, some years before the forfeiture ; for they could not prove he was five years in possession before the forfeiture.

The Lords ordained them to take trial of his five years' possession preceding his being fugitive ; because his tenant's possession was reputed to be his possession, and though his tenant had apprised it, yet he could not invert it.

But what if a rebel fly and desert the possession on his committing the crime? Then the quinquennial retour behoved to be from the perpetration of the fact backward.

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1686. *January 13.* LADY KIRKLAND and JOHN ROBERTSON *against* KIRKLAND'S HEIR.

EUPHAME Seton, Lady Kirkland, and John Robertson her husband, gave in a bill, showing that her first husband was bound to infest her in the liferent of 20,000 merks ; and that, having that sum secured on her father's lands of St Germain's, he had put her name in it ; but she had not accepted of it, because the Earl of Winton, superior, had a depending reduction and declarator that the lands held ward, and likewise that the charter bore a *pactum de non alienando*, and that St Germain's had granted many base infestments, whereby both the legal and conventional recognition were inferred ; and therefore craved the Lords would either ordain Kirkland's heir to infest her in warrandice of that infestment on St Germain's, in case the Earl prevailed, or else that her uplifting her annualrent and jointure out of St Germain's shall no ways import her acceptation of that infestment out of St Germain's to be in satisfaction of the obligation in her contract of marriage.

The Lords having considered this petition, they declared that the petitioner, till the event of the process betwixt St Germain's creditors and the Earl of Winton, may uplift her annualrents out of the lands of St Germain's ; and that the same shall not import her homologation of that infestment in these lands, as if she accepted it in satisfaction of her husband's obligation to her in her contract of marriage, so as to prejudice her recourse against Kirkland, in case Winton prevail ; and remitted the rest of the affair between her and her son to Kemnay, who heard the cause.

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1686. *January 19.* The LADY NAIRN *against* GEORGE NAIRN.

THE Lady Nairn pursuing George Nairn, the late Lord Nairn's servant and chamberlain, for count and reckoning of nine years' rent of his lands ; he defended himself with partial discharges, and a total one except for half a year ; whereupon he was assoilyed from all proceedings. But she alleging that she only craved inspection of his accounts of charge and discharge, in regard there were several persons craving money for furnishings in my Lord Nairn's time, and which she believes were paid by George, and will appear from a sight of his accounts ; and he having fraudulently put them out of his hands since the communing between the tutors and him, and a little before the citation given him in the exhibition ;—the Lords ordained him to depone where they were, and to exhibit.

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