

pursuer's. And, as to the *second*, though the decret be extracted for the whole, yet he will deduce the 1000 merks paid, and restrict his charge to the surplus.

The Lords thought the extracting the decret precipitant and informal, and therefore allowed the Earl yet to be heard before the Ordinary in the cause, what he could instruct paid *scripto vel juramento* ; but, that the pursuer might not be any longer delayed, ordained that he behaved instantly to prove his allegiances, otherwise not to be received.

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1701. *November 25.*

I sat in the Outer-House this week.

1701. *November 25.* JOHN CHALMERS *against* HELEN DALRYMPLE.

JOHN Chalmers, writer, against Helen Dalrymple, relict of Daniel Dalrymple. The point in controversy was, If an adjudger, not infest, but who had charged the superior to enter him, could pursue a removing? It was *CONTENDED*, That the charge was a sufficient title to remove now, since the 62d Act of Parliament 1661, regulating payments betwixt debtor and creditor; which does indefinitely, without limitation, equiparate apprisings with a charge following thereon, as equivalent to an infestment: And Stair, *book 2. tit. 9.* shows that, of old, removing was not sustained on such an incomplete right as a comprising with a single charge, without denouncing the superior; *25th March 1628, Lockhart against Tenants*; yet, since the said Act of Parliament 1661, he thinks it will be now otherwise; and it is a very unfavourable and disobliging diligence for vassals to denounce their superiors.

Whereunto it was *ANSWERED*,—That it was plain, both from the narrative and statutory part of that Act 1661, that it was never designed to determine this question, if it was a sufficient title in a removing: all that was under the Parliament's consideration there, being only to clear that all apprisings led within year and day of the first effectual comprising should come in *pari passu*, and be reputed a part of the first apprising. Now, seeing it might be inquired what they esteemed the first effectual apprising, they, to define this question, declared the first effectual appriser to be him who either had the first infestment, or had done diligence for obtaining it, by charging the superior, though other apprisings might be prior to him in date; so that it ought no way to be extended *ad casum non cogitatum*, of being a title in removings.

The Lords thought the case new, and ordained it to be argued in their own presence; but the generality thought it not sufficient.

*Vol. II. Page 124.*