

1750. February 22.

ELIZABETH NEILSON and FARQUHAR her Husband *against* DONALD.

No 300.

THE Dean of Guild has no more jurisdiction than other inferior judges, to judge in a competition of heritable rights, but only in possessory questions; and even in these, where the possession has been very long, declarator of property is the only competent process.

*Fol. Dic. v. 3. p. 355. Kilkerran, (JURISDICTION.) No 2. p. 305.*

1740. November 16.

GIBSON and Others *against* TULLY, Factor for the Heirs and Widow of Fleming.

No 301.

The dean of guild may, on the application of the debtor, order a creditor in possession to repair the subject.

WHERE a creditor is in possession, and allows the subject to go into disrepair, the debtor, who is proprietor, may, and commonly does apply for an order upon him to repair. And such order having been given by the Dean of Guild in this case, with the usual certification, 'That upon the creditor's not complying with the order, the complainer should have liberty to make the repairs, and the expenses should be a preferable burden on the subject;' the creditor in possession complied in part, but did not the whole, on pretence that the insufficiency of the part not repaired had been occasioned by the petitioner's neglect to repair a part of the tenement possessed by herself; whereupon the petitioner, in consequence of the order, employed tradesmen to finish the reparations, which, on a second visit, was approved as usual.

The tradesmen now pursue the creditor, who was ordered by the Dean of Guild to repair, as said is, for payment of their accounts; and the defence being as aforesaid, that the repairs he had omitted to make had become necessary through the petitioner's own neglect; the LORDS, without determining the dispute in point of fact, to whose neglect the disrepair was owing, were of opinion, that whatever the defender might have had to object to the Dean of Guild's order, it was now too late, after the order was executed; and therefore repelled the defence; but found that the tradesmen were, upon payment, obliged to assign.

*Fol. Dic. v. 3. p. 355. Kilkerran, (JURISDICTION.) No 3. p. 306.*

1752. November.

MAGISTRATES of Stirling *against* SHERIFF-DEPUTE of Stirlingshire.

No 302.

In questions of neighbourhood within a

BY a charter of Charles I. in favour of the burgh of Stirling, confirming their former privileges, the burgh is erected into a sheriffship within itself, with