

1758. February 14. MARION and JEAN DUNCANS against JOHN BUCKNEY.

In a competition betwixt these parties, arising in a process of mails and duties of some tenements and lands lying in and about the town of Linlithgow, there were produced for John Buckney, copies, or pretended transumpt, of the whole title-deeds under which he claimed right to the subjects in question. The deeds themselves were said to be lost.

No. 6.  
Regular process necessary for making transumpt.

It was objected to the transumpt, That they were no more than copies of the principal deeds, certified by an extract under the subscription of Thomas Leslie, designed Clerk-depute of the Sheriff-court of Linlithgow, and who appears to have been only a clerk or servant of Mr. Buckney's, who was himself principal Clerk of that shire. These extracts are all certified and dated at the same time, viz. 30th December, 1726, and appear to have been done singly on the application of Buckney, without any proper or regular process, calling specially the parties interested in those writings which were to be transumed, and all others having or pretending interest, edictally, to hear and see transumpt properly made, which is the course required by law; Stair, Lib. 4. Tit. 31. § 3.: That the whole affair seems to have been slurred over as a matter of mere form, which was ordered *de plano*; and that, too, in an inferior court, where it is doubted whether even a process would have been competent, seeing the transuming of writs is not an act *ordinaria jurisdictionis*; and as no cause is assigned for so extraordinary a step, as a person's transuming at once the whole title-deeds in his possession, a very just ground of suspicion does thence arise, that it must have been done with a view to cover some defects in the deeds themselves.

Answered: There is nothing in that part of the objection, That transumpt were made in a court where Mr. Buckney was clerk, and acted by a depute; because the faith of a transumpt seems to depend upon this, that the principal writings are considered and compared by the Judge. No author has said, that transumpt may not be taken before an inferior Judge; and it is believed the contrary has been the general practice. Neither is it a good objection, That there was no process in this case; which is only necessary where the writs to be transumed are in the hands of another person; and there could properly be no process, as Mr. Buckney was transuming papers belonging to himself, and in his own hands. Neither could he have called the representatives of the granters of these writings, as they were English people, quite unknown, having no *forum* in this country. Nor can it be justly said, that these transumpt were made with any unfair design, as it was done at a time when the principal writings were produced in a former process, where the validity of them was to be examined."

"The Lords found the transumpt were not sufficient."

Act. Lockhart.

Alt. James Dundas.

G. C.

Fac. Coll. No. 98. p. 174.

See CITATION.—See APPENDIX.