

No 2. 1664. December 15. INGLIS *against* KELLIE.

FOUND that an apparent heir, though he cannot remove tenants, yet he may defend them in a removing pursued by another.

Fol. Dic. v. 1. p. 357. Gilmour.

*** See the particulars of this case, No 100. p. 2230.

1666. June 26. WEDDERBURN *against* KING.

No 3. IN a reduction of a feu *ob non solutum canonem*, found that the apparent heir might be allowed to purge at the bar, though not infest.

Fol. Dic. v. 1. p. 357. Newbyth.

*** See the particulars of this case, No 2. p. 2256.

1669. November 12. ARKINLEYS *against* CAMPBELL of Glencaradeal.

No 4.
Found in conformity with
Inglis *against*
Kellie, No 2.
supra.

IN a removing pursued at Arkinley's instance, as having right to a gift of forfaultry of his father's escheat whereupon he was infest, it was *alleged* for the defenders, that they bruiked by virtue of tolerance from Campbell of Kilberry, who was apparent heir to his goodsire, who was heritably infest in the lands libelled, and by virtue thereof had been seven years in possession. It being *replied* that the tolerance behoved to be proven *scripto*, at least that the apparent heir had continued in his goodsire's possession, without which having no title in his own person, nor possession, his right as apparent heir could not defend; it was *duplied*, that the pursuer's having — in these lands, in the gift of forfaulture, whereby neither the person forfaulted, nor any of his predecessors, were ever in possession; the apparent heir now compearing, and defending upon his predecessor's right, and concurring with the defenders, they had good interest to propone the foresaid allegiance, seeing an apparent heir *quocunque tempore* may defend, and enter to the possession of his predecessor's lands, against a person who can allege no possession either in his own person or his authors. THE LORDS sustained the defence and duply, the apparent heirs goodsire's possession being proven.

Fol. Dic. v. 1. p. 357. Gosford, MS. No 202. p. 81.