

No 2.

1675. January 26.

A. against B.

UPON a bill, the LORDS found, that parties having a joint and equal interest in lands and tenements, both as to the right itself being disposed to them jointly, and as to the respective proportion and parts of the said tenements, the principal writs should be kept by such as offered caution to the other portioners; and that transumps should be given to the other persons concerned, upon the common charges of them all.

*Fol. Dic. v. 1. p. 154. Dirleton, No 227. p. 107.*

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No 3.

An eldest brother preferred to the custody of the writs, though the estate was in Holland, where all the children succeed equally, and another brother had purchased in all the other children's parts.

1677. February 29.

A. against B.

AN exhibition being pursued at the instance of an heir of conquest; and it being *alleged* by the heir of line, that some of the lands, whereof the writs were craved to be exhibited, were in Holland; and that, by the custom there, the eldest brother did not succeed as heir of conquest, but all the brothers and sisters equally, so that the writs ought not to be delivered to the pursuer, who had only an interest as to the fifth part, whereas the defender had four parts, having acquired three from his brothers and sisters, and having one himself; and he having the far greater interest in the land and writs, ought to have the keeping of the same, being liable to make them furthcoming to the pursuer.

THE LORDS notwithstanding preferred the elder brother to the keeping of the writs.

In that same cause, it was *alleged*, that, as to the lands in Scotland, the defunct's right was only by a comprising, which was personal, and whereupon no infestment had followed; and which belonged to the heir of line, as tacks and reversions: THE LORDS, nevertheless, found, that the heir of conquest has right to the same, conform to a late decision. See HERITABLE and MOVEABLE.

*Fol. Dic. v. 1. p. 154. Dirleton, No 451. p. 219.*

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No 4.

A process of removing, at the instance of one adjudger, cannot proceed without concurrence of the rest, unless the pursuer offer a more sol-

1680. December 21.

A. against B.

ONE ——— pursues removing against the tenants of ——— lands, apprised by him. Compearance is made for ———, who *alleged*, that he had apprised the same lands since 1652, and before this apprising, and so had equal right coming in *pari passu* with him, and therefore he could not remove the tenants without his consent. It was *replied*, *imo*, That the pursuer's interest was very great, and the other parties but small, and therefore he could not hinder the removing.