

about the property of a muir, in which they succumbed, and had a decret pronounced against them. Before extract, Lord Torfichen interposes, and offers to produce documents that the muir is the property of his vassals. The question is, Whether he ought to be heard?

The Lords found he could, because he had an interest in the question; for though it was not disputed but that he was superior of the muir in question, yet he was not obliged to change his vassal; and it was thought more his interest to keep his own vassal, with whom, or with whose predecessors, he had entered into the feudal contract, than to admit a stranger to the fee. Therefore, though it was not necessary to call him in the process, yet he might come voluntarily into the field, and show reason why the decret should not pass, at any time before extract, in the same manner as the feuars themselves would have been allowed to produce any new-discovered evidents of their rights.

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1739. *November 27.* ——— *against* SHERIFF of SUTHERLAND.

IN this question, the Lords found, That the pursuer, though he had laid his libel solely on the Act of Parliament about wrongous imprisonment, and concluded in terms of it, yet, without necessity of amending his libel, he could alter his conclusion to damages for oppression, and expenses.

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1739. *December 5.* THOMAS M'DOUGAL *against* BARBARA M'DOUGAL of M'KERSTON.

[*Elch., Prescription, No. 20; Kilk., ibid. No. 5; C. Home, No. 126.*]

IN the year 1669, Henry M'Dougal took the estate of M'Kerston to himself in liferent, and his son Thomas in fee, and the heirs of his body; but with full power to the father to contract debt, burthen the lands, anailye and dispone as he should think fit. The investiture of the estate stood in this manner till the year 1684, when the father, Henry, in consequence of the power he had reserved to himself, made a bond of tailye, by which he devised the estate to Thomas his son, the present fiar, and his heirs-male, with a prohibition to anailye, dispone, or contract debt; and strict irritant and resolute clauses in case of contravention. Henry died in the year 1692, without executing this bond of tailye, and Thomas his son continued to possess the estate, upon the investiture 1669, till about the year 1700 that he died; and his son Henry served heir to him upon the footing of that investiture, and possessed the estate in fee-simple. About the year 1716, he executed a settlement of his estate upon his daughter, Barbara M'Dougal, the present defender, and the heirs of her body: in consequence of which settlement she was infeft after his death,