

1671 and 1672. The EARL OF ARGYLE *against* The LAIRD OF M'NAUGHTON.

*February 13, 1671.* THIS is a declarator of property of the forest or mountain of Benbowie. Against which, ALLEGED, for M'Naughton,—That the same was properly his, lying within the bosom of his lands, environed thereby at three corners, and lying open only at one; it was also contained in some of his seasines; he had been in possession of it these hundred of years, by all deeds and acts of possession and property, and by debarring the pursuer from the same.

ANSWERED,—That any acts of possession he had, were only as subforester to him, and so can never be relevant to infer property; whereas the Earl possessed by all acts of dominion that can be condescended on. And it were a strange thing in the Highlands to hear any doubt who were heritor of that forest, since it was never controverted there but it is the Earl's; and he has slain 150 deer in it at a time, and has interrupted any possession the defender had. *Item*, there is quinquennial possession retoured, anterior to the forfaulture; which is enough to the king and his donatar, by act of Parliament.

They being both alike pregnant in their allegeances, there is a mutual probation appointed them *hinc inde*, for leading witnesses upon their possession.

They will both get witnesses enough, to prove what they please.

*Advocates' MS. No. 131, folio 90.*

*June 25, 1672.* THE Lords having considered the probation used in the action marked *supra*, at No. 131, betwixt the Earl of Argyle and the Laird of M'Naughton, they find the forest contended for, to be a part of my Lord Argyle's property, and therefore discern M'Naughton to remove therefrom.

Every one foresaw this would be the state of that action, considering the pursuer's probable interest in the President. *Advocates' MS. No. 348, folio 136.*

1672. *June 25.* SEATON of Gairleton *against* The DAUGHTERS of SIR ROBERT SEATON of Windygaule.

UMQUHILE Sir Robert Seaton of Windygaule having made an excambion with his brother, the Earl of Winton, whereby in lieu of his lands, he got an heritable right in my Lord Dumfries his lands; to which sums, Gairleton, as heir, laying claim, compearance was made for Sir Robert's sisters, who alleged the said sums behoved to belong to them, who would be his executors in law, because made moveable by Sir Robert in his lifetime, in so far as he required them and charged the debtors with horning, *quo facto animum declaravit*.

Against which it was ALLEGED,—That the same ought to be repelled, in regard they offered them to prove that it was never his intention to transmit this sum to his executors by the said charge; seeing *esto* he had got it, he intended *simul et semel*, to have wared it on land. He was frequently heard say his sisters should never have a penny of his means; yea they themselves in their ordinary discourse, boast, that good providence has thrown that in their lap which their brother never designed for them. That the bond charged on, was but a bond of cor-