

the donatar against him, was by collusion, it being only in absence; and the defender omitted to propone his competent exception, that he being *bona fide* possessor, he could not be liable to the donatar for by-gones; and the gift being acquired to the defender's behoof, he cannot make use thereof to invert his possession; but his intromission must be ascribed to the apprising, as the most sovereign right, and *sors durior*, to stop the expiring of the legal.—THE LORDS found the pursuer having entered to the possession, by virtue of the apprising, he could not invert the possession, and ascribe the same to the gift of escheat, and that therefore his possession must be ascribed to the apprising.

No 66,

*Fol. Dic. v. I. p. 599. Sir P. Home, MS. v. I. No 462.*

1685. March 24.

GLENDINNING and MAXWELL against GLENDINNING and CARSAN.

THE LORDS advised the count and reckoning pursued by Glendinning and Maxwell, against Glendinning and Carsan; and they found, that a ratification of a wadset right of 3000 merks did not hinder nor debar the granter of the ratification to propone payment upon discharges given by the wadsetter, prior to the said ratification, seeing it was only given in corroboration of the said right; and found these discharges were valid and probative, being between master and tenant, though not signed before witnesses; and that the wadsetter having been once in possession, he could not invert it by designing himself in the discharges only as factor to James Chalmers, an appriser; for though James was preferable, yet the wadsetter should not voluntarily have ceded the possession, unless he had been legally put from it; and they found a note of a messenger's pointing some oxen not sufficient to instruct that the creditor pointed them; because it was not by way of instrument, nor were the letters of pointing produced.

No 67.

*Fol. Dic. v. I. p. 598. Fountainball, v. I. p. 356.*

1686. December 7.

MR GEORGE DICKSON and WILLIAM FOSTER, Writer, against SIR GODFREY M'CULLOCH of Ardwal.

IN Mr George Dickson and William Foster, writer, their case against Sir Godfrey M'Culloch of Ardwal, the LORDS inclined to think, a man might defend upon any right he had in his person when he was pursued, and that this was not ascribing his possession to one right more than to another; but if he pursue upon one particular title, as on a gift of escheat, a right of liferent, &c.

No 68.