

thereafter the said Lord called the woman's heirs, and that for his interest, to hear that apprising be reduced, because the decret upon which it passed was reduced now. The said Sir John shewed how he had these lands titulo oneroso et petit diem ad vocandum warrantum suum. THE LORDS, by interlocutor, decerned that he ought not to have now any warrant, because there could nobody warrant such a process, and there was nothing asked here from him that he had *titulo oneroso*, for there was no question of the lands nor his infestment of these lands reducing, but alienarly of the process of apprising; *adly*, He asked the process of reduction of apprising to be deferred until his summons be also tabled, or the reduction of the decret given for the Lord Ogilvie, reducing the decret upon which the said apprising was passed, were first called; and that, because the said decret reductive concerned the said Sir John, and was given he not being called thereto; or at the least had, *in delicto*, he then being in the King's special service, so that he might not compare then for his interest, and so *legitima absentia*. *Alleged*, That his summons depending, as said is, for restoring of him against the said decret reductive, and also for retreating of the same, ought to be first decided before the said decret reductive were executed, and by virtue thereof any process led for reduction of the apprising foresaid; and to the effect foresaid produced our Seal and Letters under his signet. THE LORDS, by interlocutor decerned, that the allegiance foresaid was not relevant, because of the practick, *petitio restitutionis in integrum vel actio pro reductione alicujus decreti intentata, non impedit executionem ejusdem*; and also because our Sovereign Lord's privy letters ought not to be obeyed for stopping and hindering of justice, conform to the act made thereupon; and also, in the same case, the LORDS found that neither the act of Parliament, speaking of reduction of inordinate process to be called within three years, nor yet the act of appraised lands to be redeemed within seven years, could have place in this case, and stop the reduction of this apprising; *quia acta loquuntur in diversis casibus ut ex eorum inspectione licet cognoscere.*

*Sinclair, MS. p. 34.*

1548. February 17.

FLEMING against KER.

THE Laird of Fleming's son called Dickson of Ormiston to hear the five pound land of Glenhome, and certain other lands, decerned in non-entry, and to pertain to him the mails and duties thereof as donatar thereto, by our Sovereign Lord that last deceased; - Janet Ker, the relict of Thomas Dickson, compared for her interest, and said the non-entry of these lands pertained to her, by reason of the gift thereof made to her by the said Sovereign Lord, upon the second year before the said Lord's son's gift, and that by virtue thereof she bruiked the same diverse years. It was *replied*, That her gift might not seclude the

VOL. XXXI.

74 Q

I

No 5.

A gift of non-entry was made, and thereafter an heir was served and returned. The service and retour being reduced, the gift revived.

No 5.

said Lord's son's, because the said lands were full since Thomas Dickson's decease, by reason that a brother Thomas, son to the said Thomas, elder, was served by brieves as nearest and lawful heir to him of the lands, and entered thereto and bruiked the same eight or nine years, and therethrough the said Janet's gift had taken full effect, and was expired by that entry of the heir. It was *duplicated* by Janet's procurator, That that service and retour was thereafter reduced, and decerned by decret of the Lords to have been of no avail, because there was no sasine of the said Thomas younger of the said lands shewn to the assize, as the Lords' decret of reduction produced by the said Janet reported, and so that retour and sasine following thereupon were of no avail, and that there was no lawful entry of the righteous heir to the said lands. It was *answered* by the other party, That by the act of Parliament, there may no person, after three years, call for reduction of brieves or retours, and this retour stood unreduced eight years, she being present in the country, and not calling for reduction thereof by reason of her interest, and so she might not now call claim to that reduction, et tanta silentia præjudicat. It was *answered* by Janet's procurator, That albeit lapsa triennii seclusio erat a reductione dicti brevi et inde secutorum per dictum actum Parlamenti, tamen reductione facta ad instantiam alterius poterat ipsa reducere ad jus suum ratione donationis prædict. quod interea dormiebat tamdiu; The Lords of Council decreeted, the said Janet's gift to prevail over the other gift, and that because there was no lawful entry of the righteous heir to the said lands libelled since the decease of his Majesty foresaid, by whom she had the gift of non-entry of the said lands; and that the brieves and retour and sasines foresaid, now reduced, prove not any lawful entry of the lawful righteous heir, and that it was even all one as if that retour and sasine alleged had never been; and that it takes not away the gift of non-entry preceding, because it was not lawful nor righteous, as now appears clearly by the decret of reduction.

*Fol. Dic. v. 2. p. 327. Sinclair, MS. p. 86.*

1582. *March:*

VANSE against AUCHTERTUILE.

No 6.

A-party was found liable for spuilzie, having pointed upon a decree of the Lords, after reduction of it was raised though there was no suspension.

THE Laird of R. called Vanse, pursued the Laird of Auchtertuile, for spoliation of certain goods, oxen, and cows. It was *answered* by Auchtertuile, That he had committed no spuilzie, because he did the same, auctore Prætores, and by virtue of the Lords' decret obtained coram Dominio Sessionis, et inductus fuit in possessionem illorum bonorum auctoritate judicis. To which it was *answered*, That the said decret was reduced, and all that followed thereupon; and so whatsoever thing the party had done by the said decret, it being reduced and taken away, it is alike as if it had never been in rerum natura, et sic