

S E C T. II.

Summons of Error.—Warnings.

1582. *November.* Laird of DUNDAS *against* ELPHINSTON.

THE Laird of Dundas pursued the Heir of Mr Nicol of Elphinston for reduction of a decret given by the Sheriff of Edinburgh or Lothian, whereintill certain soumes grass of the lands of _____ and other pendicles of the lands of _____ were adjudged to appertain to the said Mr Nicol Elphinston, and his lands of _____ partly by the decret of the Sheriff, partly by cognition taken thereintill by an inquest, and the Sheriff's authority interponed thereto. It was *alleged*, That the Laird had no interest to pursue the summons, because of the act of Parliament made by King James VI. whereintill it was provided, that all summonses of error or inordinate process that are to be raised by any persons who think themselves hurt or prejudged, either by the determination of an inquest, or by process of the Sheriff, should pursue the same within the space of three years after the leading of the said process, as at more length is contained in the said act. THE LORDS, notwithstanding of the said allegiance, made upon the said act, gave process, and repelled the allegiance, and found, That the said act could not be extended to, nor yet meant of the decreets given by Sheriffs, but only was meant anent the service of retours.

Fol. Dic. v. 2. p. 119. Colvil, MS. p. 340.

No 270.
The act relative to prescription of summonses of error restricted to services of retours.

1628. *February 29.* Earl of NITHSDALE *against* Ld. WESTERHALL.

ALTHOUGH, by the acts 1494 and 1617, reductions of retours prescribe in 3 years, yet it was interpreted by the Lords to be only of reducing them for error or informality of the process; but as to improbation, as false or feigned, it was found competent at any time, *cum nunquam præscribitur in falso*, unless it be otherwise enacted by a statutory law.

Fol. Dic. v. 2. p. 119. Spottiswood.

No 271.

* * This case is No 25. p. 2192. *voce* GROUNDS and WARRANTS.