

No 30. observed, but the matter was thereafter ordained to lie over till further advisement. See No 17.

Durie, p. 535.

No 31. 1631. January 20. GORDON against EARL of GALLOWAY.

A DECREET given *in foro contradictorio* cannot be reduced *ex instrumentis noviter repertis*, but in some cases.

Auchinleck, MS. p. 188.

* * * Durie's report is No 262. p. 12136., *voce* PROCESS.

1631. February 4. LAIRD of GLENGARRY against LAIRD of FOWLIS.

No 32.
Whether a
transumpt of
a charter of
confirmation,
without a
sasine, suffi-
ciently in-
structed a
title.

In a reduction and improbation pursued against the Laird of Fowlis, at the instance of the Laird of Glengarry, as heir served and retoured to his great-grandfather, Celestine of the Isles, son to John Lord of the Isles, for reduction and improbation of all rights made to the defenders or their authors, by Alexander son to Celestine, or by Donald his son, or by Margaret or Janet his sisters, &c., the pursuer for instructing his title produced a transumpt of a charter of confirmation granted by the King of a base infeftment given by John Lord of the Isles to Celestine his son. The confirmed charter was dated 1463, the confirmation was 1466, and the transumpt was given before the official of Murray. *Alleged* by the defender, No process for reduction of his infeftments, because the pursuer had no real right standing in his person by sasine, which he had never gotten, neither by virtue of the first infeftment given to Celestine, nor yet since his time; but he only shewed a naked transumpt of a confirmation of a base infeftment. *Replied*, The defender could not quarrel his right for want of a sasine; because, *1mo*, *In facto tam antiquo* sasine is not necessary; *2do*, The defender's right proceeded from the same author, and so he could not quarrel that defect; for the medium whereby the defender's infeftments were sought to be reduced was, that the descendants from Celestine, who had disposed the lands libelled to the defenders as having right thereunto by disposition or otherwise from Celestine, were never infeft therein, neither as heirs to Celestine, nor yet by disposition from him. THE LORDS repelled the allegiance *hoc loco* against the reduction, but reserved it to be disputed *in causa* after the production. Next *alleged*, No production of any writs proceeding from the King, because the pursuer libelled no right he had of the King. THE LORDS found, he ought not to produce any original rights made by the King; but if the rights granted by the King to the defenders