

No 363. proceeded, notwithstanding of the reason, in respect of the said decret given against the suspender compearing; at which time the said defence of the tack was competent, and being omitted to be proponed, they found it should neither be received by suspension nor reduction, except that it were libelled by way of reduction, that it was proponed and unjustly repelled, *quo casu* he might intent ordinary reduction thereon, and no otherways, seeing it must be presumed to have been *dolose* omitted, being competent to him before the sentence.

Act. *Primrose & Dunlop.*

Alt. *Gilmore.*

Clerk, *Hay.*

*Fol. Dic. v. 2. p. 209. Durie, p. 813.*

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1661. December 12. GORDON of Gight against ABERCROMBIE of Birkbog.

No 364.

SIR ALEXANDER ABERCROMBIE of Birkbog having obtained decret of ejection against Sir George Gordon of Gight, for repossessing him in certain lands, and paying the double rent for the violent profits; Gight pursues reduction of the decret, on these reasons; *1mo*, Because there was no law nor practick to make the violent profits of lands, without burgh, to be the double of the rent, which is only competent by custom, *in prædiis urbanis*; *2do*, The ejection was prescribed, not being intended within three years, conform to the act of Parliament; *3tio*, Gight's defence of entering, *in vacuum possessionem*, was only found probable, *scripto vel juramento*, whereas being *facti*, it was probable by witnesses.

THE LORDS repelled the first and second reasons, as competent, and omitted in the decret; and, as to third, the decret did bear the allegiance in the decret, to be Gight's entering into void possession, with consent of party, which consent not being qualified by any palpable fact was not probable by witnesses. See PROOF.

*Fol. Dic. v. 2. p. 208. Stair v. 1. p. 68.*

No 365. 1662. February 8. Lord TORPHICHEN against —————

IN a reduction of a Sheriff's decret of perambulation, upon this ground, that he did not proceed by an inquest, conform to act of Parliament, but by witnesses; this objection was found competent and omitted.

*Fol. Dic. v. 2. p. 209. Stair.*

\* \* \* This case is No 47. p. 2199. *voce* CITATION.