

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 Parliamenti, 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

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*fuit factum partis et non iudicis.* THE LORDS admitted the libel and reply. Darum hoc videbatur nonnullis Dominorum, cum de praxi nostra decreta semel lata in rem judicatam transeunt, et paratam executionem habeant, sive bene sive male lata fuerunt, nec obstabat processus et inchoata reductionis intentio. THE LORDS therefore, notwithstanding of the admitting of the summons and reply, referred the modification of the profits to themselves, quia bona fide egisse videbatur is qui interposito iudicis decreto etiam invalide intromissit.

No 6.

*Fol. Dic. v. 2. p. 327. Colvil, MS. p. 358.*

1583. November.

SWAN against RANKIN.

SWAN pursued Rankin for reduction of a sasine of certain tenements in Glasgow. *Excepted* against the summons, That the pursuer could not crave the same to be reduced as was libelled, because the sasine made mention that it was given by virtue of award of court of the Provost and Bailies of Glasgow; which award of court should have been called *principaliter* to be reduced as well as the sasine which was relative to it. THE LORDS *una voce* assolizied a libello.

No 7.

*Spottiswood, (REDUCTION.) p. 266.*

\* \* \* Colvil reports this case :

THERE was one called Swan that pursued one Rankin for production of a sasine of certain tenements of land within the town of Glasgow. It was *excepted* against the summons, That the pursuer could not pursue the reduction dictæ sasine prout libellatur, because the sasine made mention, and it was expressed in the same that it was given by virtue of award of court of the Provost and Bailies; and so it being relative to the said award of court, and making express mention of the same, except it had been called *principaliter* to be reduced as well as the sasine's self, the libel could not infer or conclude upon any reduction of the said sasine, and that namely when the said award was instantly produced before the Lords. THE LORDS, *una voce dicentes*, pronounced *definitive*, and assolizied *ut libellabatur*, that where any evident is called to be reduced, that all others to which it is relative must also be called.

*Colvil, MS. p. 381.*

Earl of MAR against My Lord ELPHINGSTON.

ALLEGED, No process, because all parties having interest are not summoned, viz. my Lady Kildrummy, who is infert publicly in the lands libelled holding of King. *Replied*, Not competent to the the defender, seeing she is not author

No 8.