

1581. *March.*GLENCAIRN *against* PORTERFIELD.

## No. 3.

In reduction of a vassal's right by the superior's heir, the Lords refused to sustain process, till the pursuer should be infest in the superiority.

The Earl of Glencairn pursued Mr. Porterfield, son to umquhile Mr. John Porterfield, to hear and see the infestment made by the said Earl's predecessor of the place, tower, and fortalice, of Dowhill, with certain lands adjacent thereto, to be reduced, revoked, and rescinded. The reason of the summons was, that Mr. John Porterfield made a bond and obligation, after the infestment was given by the Earl's goodsir, that he should not receive or fortify the Earl's enemies within the place of Dowhill; the whilk was alleged to be done by the defenders, and so had contravened, and therefore the infestments be reduced. And as the summons contended the property to be consolidated with the superiority to the Earl's behoof, it was alleged by the said Porterfield, that the said Earl had no action to pursue the reduction of his infestment, because that he libelled not he was infest, seised, or retoured, in the superiority of the said lands, but libelled him only to be heir general, which was not sufficient to give him power to reduce the defender's infestment, and to make consolidation, except he would allege that he was infest in the superiority of the said lands. The which allegiance the Lords found relevant, and found, except he was seised and retoured in special, he could have no action as general heir.

*Colvil MS. p. 324.*

1583. *July.*GIB *against* HAMILTON.

## No. 4.

An apparent heir may continue his predecessor's possession, and, being ejected, may sue an ejection, without being served heir.

James Gib of C. pursued James Hamilton of Livingston for the violent ejection of him furth of the lands of B. and libelled, that his umquhile father, Robert Gib, was in possession, and after his decease, his umquhile mother continued in possession, as conjunct fiar, by the space of two years thereafter, and immediately after the decease of his mother, he continued still in possession, as heir and successor to his father. It was objected, That he could have no action to pursue as heir and successor to his father, because, at the time of the ejection, he was not served, retoured, nor seised in the lands, but his title and instrument of sasine produced was but *in anno* —, and so he had no title at the time of the alleged ejection. To the which it was answered, That first he libelled possession as heir and successor, and the possession only was in itself sufficient to have defended him from violent ejection; and also, his sasine, whereintil he was seised nearest heir to his father and mother retrotrahitur, and so having respect to the said James's possession, continued into his person after the decease of his father and mother, and his supervenient right of sasine, *post litem inchoatam ex causa de præterito*, his title ought to stand, and he has qualified sufficient title. The

Lords found by interlocutor, That he had libelled possession, and his supervenient sasine; he had good action to pursue; and that possession with a supervenient title retrotrahitur.

No. 4.

*Colvil MS. p. 371.*

1583.

GRAHAM *against* ANNANDALE.

No. 5.

A terce is no title for possession until it be kened; and therefore, where an appriser pursued tenants to remove, the relict was not found entitled to remain in possession, not having been kened to her terce.

*Spottiswood.*

\* \* This case is No. 4. p. 15836. *voce* TERCE; in conformity with which was decided the case Barclay against Scott, 2d February, 1675, No. 28. p. 15844. IBIDEM.

1592. *July.* LAIRD OF DOWHILL *against* KILFAUNS.

The Laird of Dowhill pursued for reduction of certain infeftments of the lands of Craigtoun made to the Laird of Craigy, and thereafter by Craigy to the Laird of Kilfauns, and he qualified his entries as apparent heir to Ross, his mother. It was alleged, That he could have no action, as apparent heir, to reduce heritable titles, and that the defender could not stabilire judicium with an apparent heir, except at the least he were served general heir and nearest of kin unto the same. In the same action and process, the Laird of Dowhill pursued for the reduction of certain infeftments of the said lands, which were made by the Laird of Craigy to the Laird of Kilfauns older, and thereafter by old Kilfauns to Harrie Lindsay, his son adoptive; and it was alleged by them, That Dowhill could have no action to pursue them, because they were in this case but *singulares successores*; and albeit it was granted to him *quod ex contractu*, he might have action against the Laird of Craigy, yet they having never contracted with him, but having the lands by alienation of the Laird of Craigy, he could have no direct action against them; for the matter was, that umquhile James Sinclair having married the Lady ———, Lindsay contracted the Lady's daughter, called Marjorie Stewart, with James, brother to the Laird of Craigy, and the said James being tenant and tacksman of the lands of Craigy, obliged himself to take infeftment of the lands of Craigy to the heirs-male gotten betwixt him and the said Marjorie Stewart, his future spouse, and failing of the heirs-male, to the heirs whatsoever, and, contrary to the tenor of the contract to the infeftment, to his heirs-male

No. 6.

Found in conformity with Tweedie against Bell, No. 2. *supra.*