

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. f. 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.*