

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.*

- No. 6. whatsoever, and he having none procreated betwixt him and the said Marjorie, his brother, the Laird of Craigy, succeeded to the lands, who thereafter made alienation to the Laird of Kilfauns; but the most he could was, agere ad implemendum contractum^p matrimoniale inter Stewart et Ross.

The Lords found by interlocutor, That Dowhill could have no direct action against the Laird of Kilfauns to reduce the infeftments, because they were in this case but *singulares successores*; and reserved action to him against Craigy, vel ad implemendum contractum matrimoniale vel ad reductionem infeofamenti facti in fraudem ejusd. ad arbitrium actoris.

Colvil MS. p. 470.

1593. December 20. LAIRD RUTHVENS against CREICHTOUNE.

No. 7.

An apparent heir cannot reduce an alienation made by his predecessor after interdiction.

Apparent heir may not reduce an alienation made by his predecessor after he was interdicted. But the interdictors may pursue the reduction themselves, without concurrence of the heir or apparent heir. *Item*, A party in some causes will be heard to compear in one part of the process, and be not compearing in all the rest.

Haddington MS. No. 159.

* * * The above is only the rubric of the case. The report itself is obliterated in the MS. copy belonging to the Faculty of Advocates. There are other copies extant, to which the Editor expects to obtain access.—See APPENDIX.

1610. November 20. MASTER OF BOYD against LD. CARWELL.

No. 8.

An apparent heir of ward lands will obtain a modification for his aliment, although he be not served.

An apparent heir of ward lands will get modification for his aliment, albeit he be not served heir, but the pursuit of that action will make him heir. In the estimation of the rental, the Lords will not only consider the yearly duty of mail and farm, but also the entries and grassums which the donatars to the ward have got from the kindly tenants, because in many parts of the country the grassums are great, and the yearly duty very mean.

Haddington MS. v. 2. No. 2002.

1616. January. GLENDINNING against TENANTS of PARTON.

No. 9.

In an action pursued by Glendinning of Glendinning against the Tenants of Parton, for spuilziation of teind, the Lords would not sustain an inhibition used as heir to his goodsir, because he was not sevred or retoured at the time of using of the inhibition.

Kerse MS. p. 138.