

1606. February 18. MACMATH against HEWIT.

In an action of removing pursued by Macmath against Hewit, it was *alleged*, That the pursuer could have no process, because his title produced was his sasine, which could be no title, because it was given long after the term of Whitsunday. It was *answered*, That it was given upon a retour, which was *declaratoria sanguinis*, and so should be drawn back in favour of the pursuer, especially seeing the defender was tenant to this pursuer, and to his predecessors, to whom he is served heir.

No 26.

*Fol. Dic. v. 2. p. 303. Haddington, MS. No 1047.*

1608. December 10. HAMILTON against HARVIE.

JOHN HAMILTON pursued a removing as donatar to Patrick Butter's escheat and liferent against Andrew Harvie and certain tenants, who excepted, that he could have no action upon that warning, because it was raised and executed long before his decret of declarator; and as in recognitions; it was found betwixt Newark and Calderwood, and Newark and Bekkie, that no warning could be made upon a sasine of recognition without declarator, so could none be granted upon liferents without declarator; it was *answered*, That they were not of a nature, and that the decret *in declaratoriis* was drawn back to the gift and summons, and if no warning might be made before decret of declarator, the donatar might be frustrated by the cavilators of the defender his whole lifetime. In respect whereof, the LORDS repelled the exception, and reserved the modification of the violent profits to themselves.

No 27.

Found in conformity to Henderson against Southhouse, No 24. p. 13264.

*Fol. Dic. v. 2. p. 306. Haddington, MS. No 1505.*

1610. February 9. Earl of KINGHORN against ARBUTHNOT.

A REDEMPTION sustained, albeit the pursuer was retoured and seised long after the warning, his predecessor being deceased diverse years before, in respect of the like practick past before betwixt the Earl of Kinghorn and Arbuthnot.

No 28.

*Fol. Dic. v. 2. p. 304. Haddington, MS. No 1802.*

1610. June 16. WARDLAW against Earl MARISCHAL.

AN execution for translation of a contract, thereby to obtain payment of the sum therein contained. That debt not being contained, nor confirmed in the testament, and so the summons being quarrelled, the same was sustained by a

No 29.