

SERVICE OF HEIRS.

SECT. I.

What Court competent to serve?—Service MORE BURGL.

1589. *March.* CARMICHAEL *against* EARL of ANGUS.

THE Laird Ballandie Carmichael obtained a commission to the four ordinary macers, to serve a brieve within the tolbooth of Edinburgh, which was raised by him to serve him nearest and lawful heir-male to umquhile Peter Carmichael, in the lands of Craigpetie, lying within the regality of Abernethy. The cause of the commission was alleged to be, that William, Earl of Angus, who was superior of the said Laird, pretended right and interest to the property of the said lands, and so albeit the lands lay within the regality of Abernethy, and that the service of brieves appertained directly to come forth of the Chancery of the regality; and therefore, because the Lord of the regality had interest to the property of the lands, and would be both judge and party, the commission was granted in manner foresaid. The Earl of Angus having meaned him by a supplication, that albeit he claimed interest to the property of the lands, yet he ought not to have been prejudged in his privilege of regality, but that the brieve ought to have been direct forth of the Chancery, and he to have given judges unsuspected to have sitten and and cognosced thereintill; the Lords found, that in so far as he claimed interest to the property of the lands, he nor his deputes could not be judges in the service of the brieves; and therefore ordained the commission to stand.

Fol. Dic. v. 2. p. 370. Colvil, MS. p. 450.

1627. *March 17.*
EARL of LAUDERDALE, *against* LAIRD of CRAIGHALL and LEE of Broadwood.

A PARTY being infeft in land, and he and his authors long in possession, to which land another party pretended right, intending to serve himself heir to some of his predecessors of the said land, the party infeft and in possession obtains a de-

No. 1.
Service of brieves of lands in a Regality, if the Lord thereof have any claim to the lands, should be by commission to the macers or others, notwithstanding the Lord of Regality's privilege.

No. 2.

- No. 2. creet of the Lords, discharging the director of the Chancellory to give out brieves, and the sheriffs to grant services of brieves to the other party, until he that stood infest be specially cited to compear in the said service.

Auchinleck, MS. p. 20.

1628. November 27.

LORD CARMICHAEL *against* CARMICHAEL.

No. 3.

THE Lords of Session, upon consideration of some difficulties that may arise in the serving of some brieves, will ordain them to be served before the macers, but this must be done by a summons, and not by a bill raised at the instance of the party who desires the brief to be served.

Auchinleck, MS. p. 21.

1630. March 6.

The LAIRD of CASKIBEN, Supplicant.

No. 4.

Brieves may be directed to any judge to serve a man heir in general, though he do not live within that jurisdiction.

A SUPPLICATION given by the Laird of Caskiben, craving, that no warrant might be granted by the Lords to discharge brieves out of the Chancellory, direct to the bailies of the Canongate, for serving of him before them general heir to one of his ancient predecessors, viz. the Laird of Dalgetie; the Lords doubting hereupon amongst themselves, found, that brieves for serving of any party general heir to their predecessors, might be served before any judge within the kingdom, to whom the brieves were directed out of the Chancellory, and that that judge, (whosoever had jurisdiction) might proceed in these general services, the same not being special services to land, and that this hath been the usual custom before, albeit neither the impetrator of the brieves, nor his predecessor, to whom he was to be served general heir, did ever dwell or remain within that judge's jurisdiction.

Fol. Dic. v. 2. p. 370. Durie, p. 501.

1784. February 4.

JANET HOUSTON and Others, *against* JOHN HOUSTON.

No. 5.

In the entry of heirs *more burgi*, the want of the legal formalities is not to be supplied by equipolent circumstances.

GEORGE HOUSTON executed a disposition of certain heritable subjects, lying within the burgh of Fortrose, "in favour of himself in liferent, and of the heirs of his body in fee; whom failing, in favour of his brother John Houston, and the heirs of his body."

After the death of George, John took infestment on the disposition *more burgi*. In the instrument of sasine, however, it was not expressed, that the bailies had