

ceed in the confirmation thereof, until an action of reduction, intented before the Lords, for reducing of the said testament, was first discussed, intented at the instance of the said Oyes against the Redict; but the Lords assigned a day in December to the said reducers, to discuss the said reduction, after the which day they would consider if any further day should be granted, to end the reduction, or if then the matter should be remitted.

*Nota.* Four days before this, the contrary was done, betwixt M'Morahame and M'Morahame, where a testament craved to be confirmed, and desired to be advocated upon the like dependence of a reduction, the same was refused, and the matter remitted to the Commissaries.

Act. *Hope & M'Gill.*

Alt. *Stuart & Nicolson.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 327. Durie, p. 228.*

No 11.  
Commissaries in consequence of a depending reduction; but, in a like case, a few days after, advocacy was refused.

1627. February 13.

A. against B.

No 12.

In a reduction, the extract of a registered writ doth satisfy the production, though it be registered after the intending of the cause. Otherwise, in an improbation, wherein the principal must be produced.

*Spottiswood, (REDUCTION.) p. 266.*

1627. December 21. EARL OF MARR against HIS VASSALS.

No 13.

In the action of improbation pursued by the Earl of Marr against his Vassals in Marr and Garioch, he called for all writs by my Lord Erskine, or Earl of Marr *nominatim*, or by Dame Isobel Douglas, or Margaret her mother; or by Thomas, brother to Margaret, or by any other of his successors, to whom he may succeed *jure sanguinis*. It was *alleged*, He could not call for writs made by Margaret, Donald, or Thomas, because the Earl of Marr, himself, produced no elder right to instruct his title, but that which was made by Dame Isobel Douglas. THE LORDS found that he had right and interest to pursue for reduction of the writs called for in the improbation, but reserved to them that produced elder rights than Dame Isobel's all their defences to be produced in the action of improbation.

*Auchinleck, MS. p. 184.*

1628. February 2.

A. against B.

No 14.

A SUMMONS of improbation and reduction being pursued by the defender produces his writs, to have the improbation, but refuses to reason.

- No 14. upon the reasons of reduction, and passes from his compearance of that part of the summons, by reason of some practicks past in that form before, which, notwithstanding, they took hardly with, and wished the same may be mended either by ordinance of the Session, or by act of Parliament.

*Auchinleck, MS. p. 184.*

No 15.

1628. February 2. TELFER against LADY OGILVY.

WHERE a party is compeared and held *pro confesso*, he will not be heard to give his oath, although he crave the same by reduction of the first decret.

*Auchinleck, MS. p. 184.*

No 16.

1628. February 11. A against B.

SUMMONS of reduction of a retour for an error sustained, although it be not under the quarter-seal, because it concluded no punishment of assizers for their error.

*Auchinleck, MS. p. 188.*

\*\*\* The case here alluded to by Auchinleck, seems to be that which follows.

No 17.

The defender in a reduction must produce his retour, though it be registered in Chancery.

1628. February 12. KER against SCOT.

IN an action of reduction Merk Ker *contra* Scot of Hertwoodmires, for reduction of a service and retour, with the execution thereof, wherein the Judge, clerk, and assizers were summoned, it being *alleged*, That the summons could not be sustained, being a summons written in English, and under the signet, contrary to the order of the chancellary, and the ancient custom and practice ever kept in such actions and summonses of error, which used to be written in Latin, and on parchment, and were under the quarter-seal. This allegiance was repelled, and the summons sustained, because the summons concluded, or was restricted by the pursuer, only to the reduction of the retour, and concluded no punishment of the assizers, but was only pursued to have the retour reduced and taken away. In this same process, the LORDS found also, that albeit the retour was registrated in the chancellary, whereby the defender *alleged*, That the same being a public register, the pursuer ought to extract the same himself, and that the same could not be reduced, for not production, yet the LORDS found, that except the defender should produce the retour, (it being his own proper evident) that they would reduce it for not production. See No 29.

*Act. Aiton.*

*Alt. Scot & Cunninghame.*

*Clerk, Gibson.*

*Fol. Dic. v. 2. p. 326. Durie, p. 344.*