

1630. July 13. LAIRD of PITSLIGO *against* DAVIDSON.

No 29.

THE Laird of Pitsligo intents reduction of a retour, whereby Alexander Davidson is served heir of the heirs portioners of line to umquhile Laird Pitsligo's goodsire. It was *alleged* by Alexander, That the Laird of Pitsligo had no interest to pursue reduction of the general service, which is not a service to any land, but a general service, declaring the nearest of blood, except the pursuer would allege he were nearer of blood than the defender. To which it was *answered*, That seeing by his service he was to quarrel the lands of Pitsligo, wherein this Laird stood infest, likeas he has already intented action thereanent, he had very good action to reduce the said retour, which was the ground whereby the defender was to impugn the right of his lands; which reply the LORDS sustained.

Auchinleck, MS. p. 187.

1630. July 24. Sir JOHN SCOT, Supplicant.

THIS day Sir John Scot gave in a supplication to the Lords, making mention, That all summons of error and reduction of retours, has been by ancient custom used to be expedie at the chancellery, and written in Latin, and under the quarter seal, whereas now lately many are written in Scots, by the ordinary writers to the signet, albeit there is an express act of Parliament, ordaining, that the order of the chancellery should not be broken; therefore he desired the Lords to make an act in their sederunt books, that no summons of reduction of any retour should be expedie, but as said is, in Latin, and in parchment, under the quarter seal, and by the director of the chancellery, his deputes and servants, and that no process should be granted in time coming upon any summons otherwise raised. THE LORDS ordained this to be done, and found, that the same ought to be observed in all summonses for reducing of retours, which were principally called to be reduced, but not where other writs were principally to be reduced, and retours to fall in consequence; and where retours were called principally to be reduced, they thought the said order should be kept, albeit the summons concluded no error, and albeit the persons assizers were neither desired to be punished for wilful error, nor yet that they were called in the process, but only that the pursuer desired the retour to be reduced against the direct party served, or some representing him; for the LORDS found, that such actions concerned the assizers, who, albeit they were not pursued to be punished for wilful error; yet by act of Parliament, there is ignorance alleageable against them, and so for ignorance their deed being quarrelled, the same ought to be tried by order of the chancellery anciently

No 30.
Formalities of
a summons of
error and re-
duction of
retours.

No 30. observed, but the matter was thereafter ordained to lie over till further advisement. See No 17.

Durie, p. 535.

No 31.

1631. January 20. GORDON against EARL OF GALLOWAY.

A DECREET given *in foro contradictorio* cannot be reduced *ex instrumentis noviter repertis*, but in some cases.

Auchinleck, MS. p. 188.

* * Durie's report is No 262. p. 12136., voce PROCESS.

1631. February 4. LAIRD OF GLENGARRY against LAIRD OF FOWLIS.

No 32.
Whether a transumpt of a charter of confirmation, without a sasine, sufficiently instructed a title.

In a reduction and improbation pursued against the Laird of Fowlis, at the instance of the Laird of Glengarry, as heir served and retoured to his great-grandfather, Celestine of the Isles, son to John Lord of the Isles, for reduction and improbation of all rights made to the defenders or their authors, by Alexander son to Celestine, or by Donald his son, or by Margaret or Janet his sisters, &c., the pursuer for instructing his title produced a transumpt of a charter of confirmation granted by the King of a base infeftment given by John Lord of the Isles to Celestine his son. The confirmed charter was dated 1463, the confirmation was 1466, and the transumpt was given before the official of Murray. *Alleged* by the defender, No process for reduction of his infeftments, because the pursuer had no real right standing in his person by sasine, which he had never gotten, neither by virtue of the first infeftment given to Celestine, nor yet since his time; but he only shewed a naked transumpt of a confirmation of a base infeftment. *Replied*, The defender could not quarrel his right for want of a sasine; because, *1mo*, *In facto tam antiquo* sasine is not necessary; *2do*, The defender's right proceeded from the same author, and so he could not quarrel that defect; for the medium whereby the defender's infeftments were sought to be reduced was, that the descendants from Celestine, who had disposed the lands libelled to the defenders as having right thereunto by disposition or otherwise from Celestine, were never infeft therein, neither as heirs to Celestine, nor yet by disposition from him. THE LORDS repelled the allegiance *hoc loco* against the reduction, but reserved it to be disputed *in causa* after the production. Next *alleged*, No production of any writs proceeding from the King, because the pursuer libelled no right he had of the King. THE LORDS found, he ought not to produce any original rights made by the King; but if the rights granted by the King to the defenders