

1629. February 26.

REID against LOCHORE.

No 19.

JAMES REID being a creditor to William Brown, confirmed himself executor dative to the said William for payment of his own debt, and pursued James Lochore and others, to make forthcoming to him the eight part of a ship pertaining to William. *Alleged*, That he behoved to verify himself a creditor *ante omnia*, otherwise no process at his instance. *Replied*, That his confirmed testament gave him sufficient interest, and he needed not produce any more *in initio*, but that he should prove it before the end of the cause. THE LORDS repelled the exception.

*Fol. Dic. v. 1. p. 330. Spottiswood, (TESTAMENT.) p. 338.*

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1633. March 7.

JOHNSTON against L. JOHNSTON.

No 20.

IN a declarator of liferent of the lands of \_\_\_\_\_, pertaining to umquhile Captain Johnston of Lochouse, holden of the Viscount of Drumlanrig, Lord of the regality, within which the lands lie, being sought by the donatar made by the Lord Drumlanrig, Lord of that regality; it was found, (according as the L. Johnston alleged, ought to be first done,) that no process could be granted upon that gift, except that the Lord Drumlanrig's infeftment of that regality were first produced *in ingressu litis*, and shown to the party. And where it was *replied*, That he who was donatar ought not to be compelled to produce the same *in initio litis*, it not being his own evident, seeing he offered to prov eand. produce the same *cum processu*, which ought to be sustained; as in actions of spuilzie by sub-tacksman such pursuits are sustained, if the sub-tacksman offer to prove *cum processu*, that his author was tacksman; and no necessity is found of instant production of his author's tack;—this reply was repelled, and not respected.

Act. *Advocatus, Nicolson & Burnet.*

Alt. *Stuart.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 302. Durie, p. 679.*

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1636. March 26. LORD TORTHORREL against EARL QUEENSBERRY.

No 21.

LORD TORTHORREL pursuing the Earl Queensberry for reduction of the alienation of the lands and lordship of Carlisle, upon a reason of interdiction; and it being questioned for the defender, that *ante omnia* the interdiction should be produced, which is the ground of the reason; and the pursuer *answering*, That he was not holden to produce it *in ingressu litis*, but he should produce it *in termino probationis*, after that his reason is admitted to probation; for it might