

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.

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 infestment 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.

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

be that he behoved to use incident diligence to recover the same, not being in his own hand; and the defender could not misken this interdiction, seeing in the alienation controverted, he contracted with the pursuer, as with a person interdicted, and mentioned therein the consent of the persons interdictors, to whom he was so interdicted;—the LORDS found, that in actions of reduction, which were founded upon a reason of interdiction, or upon a reason of inhibition, that the interdictions and inhibitions should be produced *in ingressu litis*, and that no process should be granted in the cause, for discussing of the reason, (after the production were satisfied,) before the same were produced and shown to the party; and therefore ordained the pursuer to produce this interdiction, before any further process were granted in this cause.

No 21.

Act. *Stuart & Johnston.*Alt. *Advocatus, Nicolson & Mowat.*Clerk, *Scot.**Fol. Dic. v. 2. p. 302. Durie, p. 808.*

 S E C T. IV.
Making up Titles *ex post facto*.

1583. —.

A. against B.

In a removing from certain kirk-lands, *alleged* by the defender, No process upon the sasine produced, because it was of kirk-lands not confirmed the time of the warning. *Replied*, It was confirmed thereafter, and before the intending of the summons, et sic fuit jus superveniens, quod facit valere quod prius non valuit;—which reply was found relevant by the Lords.

No 22.

*Fol. Dic. v. 2. p. 305. Spottiswood, (CONFIRMATIONS, &c.) p. 57.*1584. *February.*

LADY ROSS against TENANTS.

THE Lady Ross warned certain tenants to flit and remove from her terce lands, she being served and kened to the same after the death of her husband. It was *alleged*, She was served and kened before the term of Whitsunday, which was sufficient and her service *retrahabatur*; and so found by the LORDS.

No 23.

Fol. Dic. v. 2. p. 305. Colvil, MS. p. 397.