

No 185. far as the defender charged him to enter heir, and as charged to enter heir, apprised from him, and the act of Parliament anent charges to enter heir, and the charge itself, bears, That as to the creditor charged, the party charged shall be in the same condition as if they were actually entered; neither was their need of any process, seeing the defender was in possession, and whensoever the second brother's retour is made use of, the exception or reply against him, that it is null, is receivable *ope exceptionis*, and doth annull it *ab initio*; for though in reductions the effect sometimes is only from the sentence, and not *ab initio*, yet that which is null by exception, is always null *ab initio*.

In this case, the LORDS first moved Anderson to declare his apprising redeemable by this pursuer within a year, and he having declared so, the LORDS found, That the second brother's retour was null by exception, and that he had not the benefit of the act of Parliament anent retours, seeing within the twenty years the eldest brother returned, and apprising was led against him as lawfully charged to enter heir, and possession thereupon.

Fol. Dic. v. 2. p. 113. Stair, v. 2. p. 148.

1692. November 17. HAMILTON against HAMILTON and Others.

No 186.

The act 9th
Parl. 1669
introducing
the vicennial
prescription
of holograph
bonds found
to extend to
bonds granted
before that
statute.
See No 188.
p. 10990.

IN the case pursued by Archibald Hamilton, late Dean of Guild of Edinburgh, against Hamilton of Hagg and others, the LORDS found a holograph bond prescribed, because not pursued for within 20 years after the act of Parliament 1669, though it was of a date prior to that act; and so they found, that the act extended not only to holograph writs subsequent to the act, but even prior to it, though laws commonly *futuris tantum dant formam negotiis*; and antecedent to that act, holograph writs did prescribe in 40 years, till they were abridged by this act to 20. And found, that a compensation founded upon in a process, within that 20 years, was a sufficient interruption, though the account under Hagg's hand, which was the ground of the said compensation, bore no date, only one article of it mentioned the year 1667; and found, though the said account bore not to whom it was due, yet the haver and present producer of it now was presumed to be the creditor therein, unless they instructed, that it belonged to another than him who now makes use of it.

Fol. Dic. v. 2. p. 113. Fountainball, v. 1. p. 519.