

the term after diligence will be prorogated at the parties' desire. Also the LORDS found, that this pursuer had sufficient interest to reduce this retour and service, albeit he was not nearest of blood to that party to whom the defender was served heir, if that service were reduced, and although the person served heir were a bastard, seeing there were bairns on life begotten in lawful marriage, of the other daughter of the said umquhile L. Pitsligo, and who would ever be preferred to this pursuer, being nearer in blood than he; likeas there is one gotten of that marriage served and retoured heir to the said umquhile goodsire, and whereby the defender *alleged*, that this pursuer had no interest to reduce that service; which allegiance was repelled, and the said pursuer was found to have interest to reduce the said retour, albeit he was not nearest of kin to the defunct, seeing he was infest, and in possession of the lands of Pitsligo, and his father and goodsire before him, whose right might be drawn in question by that retour and service; likeas thereupon action of reduction and improbation was intended at their instance against him, for production of his evidents of the said lands; and whereby the LORDS found, that he had interest to reduce the said service, which was the ground of the pursuit intended against him. See *JUS TERTII*.

No 111.

Act. *Advocatus, Nicolson & Morvat.*Alt. *Stuart & Lawrie.*Clerk, *Gibson.**Fol. Dic. v. I. p. 496. Durie, p. 534.*1687. *July.* MARGARET CALLENDAR *against* JOHN BOWAY.

THOUGH by the sixth act, Parliament 20. James VI., the Commissaries of Edinburgh are appointed sole judges to the reduction of inferior Commissaries' decreets, yet the LORDS advocated, *ob contingentiam causæ*, the reduction of a decret dative *ad omisssa*, pronounced by the Commissary of Stirling, in respect some of the sums omitted were produced before the session by the obtainer of the dative.

No 112.

*Fol. Dic. v. I. p. 496. Harcarse, (ADJUDICATIONS.) No 17. p. 5.*1707. *March 4.*

WILLIAM ALVIS, Sheriff-depute of Dumfries, and JOHN LANRICK, his Fiscal, *against* GEORGE MAXWELL of Dalswinton.

JOHN KELLY, sheriff-officer, coming to Dalswinton's house to give him a citation to the sheriff-court, at the instance of one Maxwell, for payment of a civil debt, Dalswinton calling for his act of admission, and he answering, he had served many years in that office, and needed not carry it always about him, Dalswinton imprisoned him for some hours, and then convening his te-

No 113.  
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No 113.

nants, did publickly put him in the stocks; for which insolence and riot upon an apparitor and minister of justice, Dalswinton being cited before the sheriff, he procured an advocation to be passed and signed; whereupon Mr Alvis, as sheriff-depute, gave in a complaint to the Lords, representing the foresaid matter of fact, and how his sheriff-mair was insulted in the execution of his office, and that processes for vindicating their jurisdiction, and securing their servants, and punishing insults against them, belonged to the sheriff in the first instance, as the King's ancient lieutenant for securing the peace and tranquillity of the country, and that the Lords could advocate no more such causes to themselves, than they can judge in criminal actions; and though he might have proceeded notwithstanding of the advocation, as being impetrated by mistake, yet he had that regard to the Lords' authority, that he sisted procedure, till he applied to their Lordships to recal the advocation as surreptitious and unwarrantable. *Answered*, That the said pretended sheriff-officer came into his chamber, and thrust open the door in a very rude and uncivil manner, and could shew no warrant or commission; so he had no reason to look upon him otherwise than as a fellow come to affront him. And the advocation being now passed, whether right or wrong, could not be summarily recalled, but discussed *via ordinaria*, by calling for it at the minute book, and getting it enrolled; the suspensions and advocations being now very far advanced in the outer-house. THE LORDS found they were not judges competent to riots, batteries, and bloodwits in the first instance, but only when they came in before them by suspension or reduction; and therefore recalled the advocation as illegal and irregular; and the stop being thus removed, allowed the sheriff to go on, reserving always to Dalswinton his remedy by suspension, if he thought himself wronged.

*Fol. Dic. v. 1. p. 496. Fountainhall, v. 2. p. 354.*

No 114.

In a process for aliment at the instance of a woman against her alleged husband, the defender denied the marriage, and the pursuer offered to prove it. Though this was an incidental question, the Lords refused to sustain themselves judges; but stopped the

1710. December 29. Mr JOHN INNES against ANNA CAMERON.

Mr JOHN INNES, son to Sir A. Innes of Coxtou, having conversed several years with Anna Cameron, as his wife, and begot two children on her, and she being with the third, he deserts her, and denies any marriage to have passed betwixt them. She being reduced to straits, before she pursues a declarator of adherence, she raises a summons of aliment against him *medio tempore* for L. 50 Sterling, for each year bygone and in time coming. *Alleged, Imo*, This summons has been originally blank, and not designed for an aliment; because, by the act of sederunt in 1672, aliments are enumerated among the privileged summons to pass on six days, whereas this is upon 21 days warning, and so cannot have the benefit of a summary enrolling; and though it be a *libellus nominatus*, and well known in law, yet it is not so much as backed "a summons of aliment." *Answered*, She opposed her summons fairly libel-