

to have bigged the saids houses, and restored them as good as they were the time of the burning, or else to pay, considering that the walls being the principal part of the house, were standing undestroyed; notwithstanding the whilk allegiance, the libel was found relevant.

*Fol. Dic. v. I. p. 143. Maitland, MS. p. 13.*

No 125.

1612. *June 18.* DUNWIDDIE *against* The RELICT of MR JOHN JOHNSTON.

No 126.

IN transuming charters or sasines of lands, it is necessary to call the superiors of the said lands; and albeit the like custom have not been in transuming of sasines of lands holden of the King in time by-past, yet the like reason militates for his Majesty's interest; and the LORDS will proceed so in time coming.

*Fol. Dic. v. I. p. 143. Haddington, MS. No 2494.*

1623. *February 15.* HOP-PRINGLE *against* E. HOME.

No 127.

IN an action of reduction pursued at the instance of James Hop-Pringle, as heritor of certain lands, against the E. of Home; the title and interest of which pursuit was libelled, and founded upon this sasine, being pursued at his instance as heritable proprietor; THE LORDS sustained the pursuit, and the sasine produced to instruct the pursuer's title, albeit the same was a sasine which was transumed after the intending of the summons of reduction, and after the defender was summoned in the action; and albeit the defender *alleged*, that the title, whereupon the summons was founded, ought to precede the same; and that a sasine, which only had authority after the intending of the summons, by that subsequent transumpt thereof, could not instruct and be a title to a preceding intended cause; yet the LORDS repelled that exception, seeing the sasine itself was of a date long preceding the summons, albeit it was transumed thereafter: Likeas also the same was sustained, albeit the defender was not cited to the transuming, who, as was alleged by the defender's procurators, ought necessarily to have been summoned to the transuming, seeing he was cited in the principal cause before the transuming, and so could not be miskenned in the transuming, but should have been summoned thereto, which allegiance was repelled: And the Lords found no necessity to have summoned the E. of Home to the transuming of the sasine, albeit he was made defender before the transumpt by his preceding citation in the principal cause.

A transumpt of a sasine, obtained in a process raised during the dependence of another process, was, (in opposition to No 125. p. 2244.) found to instruct the pursuer's title in that prior process, without citing the defender, in the second process.

Act. *Aiton et Nicolson, jun.*

Alt. *Hope et Belshes.*

Clerk, *Scot.*

*Fol. Dic. v. I. p. 143. Durie, p. 47.*