

- No 14. upon the reasons of reduction, and passes from his compearance of that part of the summons, by reason of some practicks past in that form before, which, notwithstanding, they took hardly with, and wished the same may be mended either by ordinance of the Session, or by act of Parliament.

Auchinleck, MS. p. 184.

No 15.

1628. February 2. TELFER against LADY OGILVY.

WHERE a party is compeared and held *pro confesso*, he will not be heard to give his oath, although he crave the same by reduction of the first decret.

Auchinleck, MS. p. 184.

No 16.

1628. February 11. A against B.

SUMMONS of reduction of a retour for an error sustained, although it be not under the quarter-seal, because it concluded no punishment of assizers for their error.

Auchinleck, MS. p. 188.

*** The case here alluded to by Auchinleck, seems to be that which follows.

No 17.

1628. February 12. KER against SCOT.

The defender in a reduction must produce his retour, though it be registered in Chancery.

IN an action of reduction Merk Ker *contra* Scot of Hertwoodmires, for reduction of a service and retour, with the execution thereof, wherein the Judge, clerk, and assizers were summoned, it being *alleged*, That the summons could not be sustained, being a summons written in English, and under the signet, contrary to the order of the chancellary, and the ancient custom and practice ever kept in such actions and summonses of error, which used to be written in Latin, and on parchment, and were under the quarter-seal. This allegiance was repelled, and the summons sustained, because the summons concluded, or was restricted by the pursuer, only to the reduction of the retour, and concluded no punishment of the assizers, but was only pursued to have the retour reduced and taken away. In this same process, the LORDS found also, that albeit the retour was registrated in the chancellary, whereby the defender *alleged*, That the same being a public register, the pursuer ought to extract the same himself, and that the same could not be reduced, for not production, yet the LORDS found, that except the defender should produce the retour, (it being his own proper evident) that they would reduce it for not production. See No 29.

Act. Aiton.

Alt. Scot & Cunninghame.

Clerk, Gibson.

Fol. Dic. v. 2. p. 326. Durie, p. 344.