1680. *November* 18. ROBERT STARK *against* THOMAS KINCAID.

No. 37.

The Lords sustained a general service as a sufficient title in a reduction to force the defender to produce his own and his author's infeftments, seeing the defunct was not infeft on the comprising.

Fountainhall MS.

1681. *January* 28. LAIRD of DUN *against* SCOT.

No. 38.

A declarator of recognition sustained at a donatar's instance, though having but a personal right, being founded upon the superior's right who was infeft.

Fol. Dic. v. 2. *p.* 472.

*** This case is No. 48. p. 9098. *voce* MINOR NON TENETUR, &c.

1681. *February* 1. DEWAR *against* DEWAR.

No. 39.

One served heir in general to his father, intents a reduction of a disposition made by his father on death-bed, of an infeftment of annual-rent in favours of his second son. Alleged, A general service was not a sufficient title whereon to reduce a disposition *in lecto* of an infeftment, without he were also infeft in these lands. This being reported, "the Lords found the general service enough without a special service or infeftment;" though the grouud of the right quarrelled and craved to be reduced was a real right of lands; only the disposition which was immediately *in campo* was not a real right that in conveying it by succession needed a special service.

Fountainhall, v. 1. *p.* 128.

1681. *February* 26. The LAIRD of STROWAN *against* The MARQUISS of ATHOL.

No. 40.

Service of an heir in special lands found not to proceed on a sasine without warrant being in 1451, after the custom of sasines distinct from their warants came in use.

Robertson of Strowan having pursued reduction and improbation of an apprising, and infeftment following thereupon, which apprising was led against William Robertson his grandsir,—the Lords found, that Strowan had not interest to reduce, or improve an apprising led against his fore-grandsir, unless he were served, and retoured heir to him; Strowan having raised brieves, for serving himself heir general and special to several of his predecessors, in the barony of Strowan, and specially in the lands contained in Athol's apprising. The Marquis of Athol supplicated the Lords to advocate the service from the Macers, at least to appoint assessors, because this service would lay a foundation, and was especially designed for

roubling the Marquis in his right of possession of the apprised lands. The Lords appointed assessors, and allowed the Marquis to be heard as to the special services, but not as to the general service. Whereupon the Macers having called the brieves, general and special, and having served Strowan general heir of line to Robert Duncanson his grandsir's goodsir, and to Alexander Robertson his son, and to William Robertson oye to Alexander, they did then proceed to serve him heir in special to the lands of Strowan, comprehending the lands in Athol's apprising; which being controverted, the assessors did report to the Lords that it was alleged by Athol, that Strowan could not be served heir in special to Robert Duncanson, in the barony of Strowan, comprehending the lands in Athol's apprising, because there was not produced an infeftment in the person of Duncan Robertson, but only a charter without a sasine, and therefore the inquest could not find, that Robert Duncanson died last vest and seised as of fee, seeing there is no sasine produced. It was answered, that sasine doth not always signify an instrument of sasine, but its proper signification is possession, and can be no otherwise understood in the old acts of Parliament, mentioning breaking of sasine, which cannot relate to the instrument, but to the possession, and of old instruments of sasine were not requsite. It was replied, That before instruments of sasine the solemnity was *per breve testatum*, bearing the superior's grant of the fee, and the vassals actual possession, and albeit Craig says, that sasines were not requisite before the year 1430, yet Robert Duncanson's charter produced is *in anno* 1451, when instruments of sasine were ordinary. The Lords found, that Strowan could not be served to Robert Duncanson upon his charter only, without his instrument of sasine, seeing it is notour, that sasines were ordinary *in anno* 1451. It was further alleged for the Marquis, that Strowan could not be served heir in special to Alexander Robertson, because the infeftment of William Robertson oye and heir to Alexander was produced, and therefore Alexander died not last vest and seised in the barony of Strowan, but William his oye, so that Strowan could only serve heir general to William, which the Lords sustained. *3tio*, It was alleged, that Strowan could not be served heir in special to William Robertson, whose charter and sasine were produced, as to the lands in Athol's apprising, because William did not die seised in the said lands in fee, being divested by Athol's apprising and infeftment following thereon produced, which had attained effect by expiring of the legal, and possession these 200 years. It was answered, that though a voluntary resignation and infeftment thereupon might divest, yet not an infeftment upon an apprising, which is but a legal diligence, for security, and its being expired, and attaining possession, are matters of fact, requiring probation, which are improper for an inquest, and elidable, by a reply of payment, or intromission within the legal, and Strowan was served with reservation of the Marquis' right, as accords of the law. No. 40.

The Lords found, that Strowan could not be served heir in special to William, against whom the apprising was led, and expired; and was not neglected, nor past from, but insisted on by possession; and that there was no necessity for a special service, or infeftment, as heir to William, but that the general service, as heir to

No. 40. him, was a sufficient title, to quarrel and reduce Athol's apprising and infeftment following thereupon, on relevant reasons, as accords of the law, seeing a general service is a good title, to remove all impediments for a special service, which could not proceed, till they were reduced, or improved.

Stair, v. 2. p. 870.

1683. *February.*

CATHARINE SMITH *against* JAMES HAMILTON and His SPOUSE.

No. 41. Found that an apprising, with a charge against the superior, though no infeftment followed, is a title of reduction, though it be not a sufficient title of removing; nor was it here considered if the apprising was expired or not.

Harcarse, No. 536. p. 149.

1683. *November* 10. DUNDAS *against* WALLACE.

No. 42. A naked adjudication without a charge, though a sufficient title in an improbation, is not sustained to call for production in order to reduction of any real rights, but only of personal rights where infeftment has not followed.

Fol. Dic. v. 2. p. 471. Fount. Harcarse. Sir P. Home.

*** This case is No. 57. p. 13283. *voce* QUOD AB INITIO VITIOSUM.

*** The same found 13th July, 1688, Burnside against Crawford, No. 146. p. 12058. *voce* PROCESS.

1685. *February* 27. HERBERTSON *against* THOMAS STUART.

No. 43. Found that creditors of a minor might *intra annos utiles* intent reduction of deeds done by their debtor to his lesion in his minority, though he did not concur and revoke; that is, personal creditors might reduce personal rights granted by their minor debtor; and creditors, by real diligence against a minor's lands upon debts constituted against him, might quarrel his disposition of these lands.

Harcarse, No. 715. p. 202.