

titles standing unreduced, without any reservation of liferent, they could not be compelled to enter in question of their rights and titles, but behoved *gaudere privilegio interdicti, uti possidetis*. To all this it was answered, That Mr John Sharp could never be heard to say against the reserved liferent of John Steil in Matthew Hamilton's infeftment; because he had used the said infeftment judicially, and had obtained decreet and sentence by virtue thereof, in so far as the Lords had decerned a reversion given by John Hamilton of Shawton, (who was author to Matthew,) to appertain to him, *tanquam jus superveniens et quod accreverat illi*, because he had bought the lands. And so, having both judicially confessed the said liferent, and having allowed the infeftment whereinto it was reserved, and having also reported commodity by virtue thereof, he behoved, *ex necessitate*, to abide by the same, and consequently to fulfil the reservation of the liferent specified therein. The Lords, *in presentia regis*, admitted the exception qualified with the thirty-eight years possession. *Nonnulli DD. contra.*

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1620. January 8. The LAIRD of CLACKMANAN *against* JAMES ALLARDES.

THE Laird of Balnamoon having united the mains of Balnamoon and other lands lying contiguous to it, within the parish of Menmuir, in a barony called the barony of Menmuir, 1610: Long after, he gives an infeftment of an annual-rent of 600 merks to the Laird of Clackmanan, to be uplifted out of the lands and barony of Balnamoon, lying within the parish of Menmuir. When Clackmanan sought the ground to be provided for his annual-rent, it was alleged by James Allardes, who had comprised certain parcels of land lying within the foresaid barony from Balnamoon, that his lands should be free of the poiding, in respect they lay not within the barony of Balnamoon, but that of Menmuir. Replied, That it was only *falsa designatio, quæ non debet vitare actum cum constet de corpore*; specially seeing he offered to prove that he had taken sasine at the place of Balnamoon, where it was appointed to be taken in the charter of union; likeas, the whole lands lay contiguous. Duplied, He being infeft in the barony of Balnamoon, which was not, his sasine could be extended no further than the mains of Balnamoon, and not to the rest of the lands contained in the barony of Menmuir. Triplied, If the word of Balnamoon had been left out, and he had been only infeft in his barony lying within the parish of Menmuir, it had been sufficient; and the adjection of that word, which was superfluous, should not vitiate the rest, *cum utile per inutile non vitiatur*. After great reasoning and diversity of opinions, it was carried, by one vote only, that the wrong designation of the barony of Balnamoon for Menmuir should not prejudge the pursuer. And so the exception was repelled.

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