

the number allowed them; in which case they used to seize upon all the super-numerary and waiff cattle as escheat. *2do.* To prevent the keeping of scabbed or diseased sheep, which may infect the whole; and by which he made no profit; but the country people, who assisted at the search, got a sheep out of every flock, which was one of the perquisites and emoluments of the office; and this was all the spuilyie that was committed.

ANSWERED,---His charter carried no such right. If it had borne a *jus scrutandi*, it might have been a title *ad inchoandam præscriptionem*; but he being infest in no such *scrutinium*, but only in the property of the hill, he can never introduce any such unusual, unknown, exorbitant servitude upon them; it being none of these known in the Roman law. And though the right of forrestry had sundry special privileges of escheating the goods, that only held where it was expressly granted, being *inter regalia*.

The Lords allowed a conjunct probation, to try the beginning, frequency, and reiteration of the exercise of this power of searching, and the quantity of the emoluments, and if it was only used upon complaints, and how far it has been interrupted; and then the Lords would determine if there was a sufficient constitution for introducing such an extraordinary servitude.

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1697. *February 19.*

BRUCE *against* Low.

In a reduction betwixt Bruce and Low, on the Act of Parliament 1621, it was ALLEGED,---You cannot quarrel my infestment, because you were not a creditor till long after.

ANSWERED,---In several cases, posterior creditors have been allowed to reduce; as *9th January 1673, Street*; *2d July and 4th December 1673, Reid.* *2do.* You must be liable *super dolo*; because, though you stood infest in the fee of your father's estate, yet you communed with me when I came in suit of your sister, and suffered your father to contract for the tocher, and signed as witness to the contract, and now refuse to pay your sister's portion, because you was in the fee before the said contract.

The Lords assoilyied from the reduction, unless he would say, that he had, by some positive act, (beside his concealment,) induced him to enter into the said contract, to make him believe the father was still fiar and undenuded; especially seeing he had reserved his own liferent, out of which the tocher might have been paid.

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1697. *February 19.* The COUNTESS and EARL of ANNANDALE, and SIR WILLIAM DENHOLM of WESTSHEILS, *against* DAVID BAILLIE.

I REPORTED the Countess and Earl of Annandale, and Sir William Denholm of Westsheils, their assignee, against David Baillie, chirurgeon apothecary in Edinburgh, upon his forfeiting a bond of presentation, whereby he had obliged