

1751. *February 9.* HUGH MACLEOD *against* ARCHIBALD STEWART.

JOHN MACINLAY, merchant in Glasgow, being served heir before the bailies of Glasgow to Dougal Macinlay, burghess of Rothsay, disponded thereupon certain tenements in Rothsay to Archibald Stewart of Cratrine, who was infest in the same. It appears Dougal Macinlay's right has been personal, so as to be carried by a general service.

Hugh, son of Robert Macleod, house-painter in Maryland, pursued a reduction of the service and disposition; and the defender declining to take a day, the Lord Ordinary, 15th January, granted certification.

Pleaded in a reclaiming bill, All persons having interest are not called; the person served or his heir, ought to be called to support the service; formerly the inquest behoved to be called, 24th February, 1665, Mercer of Aldie against Rowan, No. 12. p. 14424.; and in improbations, the judge and clerk before whom the service proceeded, 17th February, 1624, Elphingston against the Earl of Mar. No 80. p. 2218.

The Lords hesitated, and delayed proceeding, till the petitioner should condescend on the heir of the person served; which if he could not do, they would refuse; and he having condescended, on a sister, they nevertheless refused.

D. Falc. v. 2. No. 193. p. 231.

No. 14.

In order to reduce a service, it is sufficient to call the person in the right by progress, without calling the heir of the person served.

1766. *February 18.* BURNET *against* BANNERMAN.

IN serving a brieve of heir-male in general, an offer was made to prove a nearer heir. The danger of delaying a service made the Court refuse the proof *hoc statu*, reserving it to be insisted upon in any process that should be raised upon the service as a title; for the delay of a service may disappoint a man and his heirs of the most lucrative succession.

Fol. Dic. v. 4. p. 272. Sel. Dec. No. 241. p. 315.

* * The report of this case from the Faculty Collection is No. 52. p. 7826. *voce*
JUS TERTII.

No. 15.