

- No. 2. creet of the Lords, discharging the director of the Chancellory to give out brieves, and the sheriffs to grant services of brieves to the other party, until he that stood infest be specially cited to compear in the said service.

*Auchinleck, MS. p. 20.*

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1628. *November 27.*

LORD CARMICHAEL *against* CARMICHAEL.

No. 3.

THE Lords of Session, upon consideration of some difficulties that may arise in the serving of some brieves, will ordain them to be served before the macers, but this must be done by a summons, and not by a bill raised at the instance of the party who desires the brief to be served.

*Auchinleck, MS. p. 21.*

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1630. *March 6.*

The LAIRD of CASKIBEN, Supplicant.

No. 4.

Brieves may be directed to any judge to serve a man heir in general, though he do not live within that jurisdiction.

A SUPPLICATION given by the Laird of Caskiben, craving, that no warrant might be granted by the Lords to discharge brieves out of the Chancellory, direct to the bailies of the Canongate, for serving of him before them general heir to one of his ancient predecessors, viz. the Laird of Dalgetie; the Lords doubting hereupon amongst themselves, found, that brieves for serving of any party general heir to their predecessors, might be served before any judge within the kingdom, to whom the brieves were directed out of the Chancellory, and that that judge, (whosoever had jurisdiction) might proceed in these general services, the same not being special services to land, and that this hath been the usual custom before, albeit neither the impetrator of the brieves, nor his predecessor, to whom he was to be served general heir, did ever dwell or remain within that judge's jurisdiction.

*Fol. Dic. v. 2. p. 370. Durie, p. 501.*

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1784. *February 4.*

JANET HOUSTON and Others, *against* JOHN HOUSTON.

No. 5.

In the entry of heirs *more burgi*, the want of the legal formalities is not to be supplied by equipolent circumstances.

GEORGE HOUSTON executed a disposition of certain heritable subjects, lying within the burgh of Fortrose, "in favour of himself in liferent, and of the heirs of his body in fee; whom failing, in favour of his brother John Houston, and the heirs of his body."

After the death of George, John took infestment on the disposition *more burgi*. In the instrument of sasine, however, it was not expressed, that the bailies had

cognosed his title as heir of provision; nor that, in virtue of the procuratory, the subjects had been resigned into their hands. John having afterwards disposed them to a natural son of his, Janet Houston, and other heirs at law of George, insisted in a reduction of John's infeftment; as being, from the defects above-mentioned, null and void.

Pleaded for the pursuers: Cognition by the bailies of an heir's title, is an indispensable requisite to his entry by hasp and staple, or *more burgi*; and it is likewise necessary that resignation of the heritage should be made into their hands. The only legal evidence of these essential circumstances is the instrument of sasine; but from that in question they do not appear to have taken place; *vid.* Stair, B. 2. Tit. 3.; Bankton, B. 3. Tit. 5.

Answered: It seems needless to have mentioned in the sasine, that cognition had been taken of a fact which must have been notorious to the bailies; and with respect to the resignation, the disponee, who in the instrument is described as holding the disposition in his hand, ought to be viewed in the double character of procurator for the disponent, and of receiver of infeftment.

The Court considered the plea of the defender as tending to annihilate the established feudal forms; and on that ground, (the question relative to the competency of the service not having been agitated,)

The Lord Ordinary having "sustained the reasons of reduction, and objections to the sasine,"

The Lords adhered to that interlocutor.

Lord Ordinary, *Hailes.* Act. *Elphinston.* Alt. *James Grant.* Clerk, *Home.*  
S. *Fol. Dic. v. 4. p. 277. Fac. Coll. No. 143. p. 224.*

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## SECT. II.

Tenor of the Brieve.—Form of proceeding.—Reduction of Service.—  
Can a Service be stopped by an offer to prove a nearer Heir?

1548. March 16. QUEEN'S ADVOCATE against ———

At Linlithgow, in the cause and action of error moved by the Queen's advocate against the Laird of ———, for retreating of his service of the lands of ———, because the retour bore, that these lands were holden of the Lord of St. ———, for service of keeping of his castle of St. ———, albeit of the law of Scotland, as the Queen's advocate alleged; there was no holding of lands,