

No 50.
tude against
tenants, with-
out calling
the proprie-
tor.

wherein the L. of Dunkintie their master, who was not called in the process, compearing and admitted for his interest, *alleged*, That no process ought to be granted in this case, tending to constitute a servitude upon his ground, except he had been summoned to this pursuit. THE LORDS found no process therein, while the master be called ; and this was found, albeit the master himself compeared for his interest, and proponed this exception himself, and not with the tenants.

Act. *Nicolson.*

Alt. *Hope.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 136. Durie, p. 343.

* * * The same case is reported by Spottiswood :

THE Laird of Ward-house pursued the tenants of Christ's-kirk for payment of their thirled multures to him, and for doing of certain services, as leading stones to the mill, bigging of the dam, &c. Compeared the Laird of Dunkintie, and *alleged*, No process against the defenders, who were his tenants, because he was not summoned, which not being done, they could not constitute any servitude upon his tenants and lands. This exception, if it had been proponed for the tenants, was very relevant ; but it was thought by many of the LORDS, that he compearing at the bar uncalled, could not be heard to allege that he was not summoned ; yet the most part sustained the exception proponed by Dunkintie himself.

Spottiswood, p. 318.

SECT. XIV.

Citation in Declarator of Redemption.

1542. May 23.

RAMSAY *against* DAMPERSTON.

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This excep-
tion to an or-
der of re-
demption
was admitted,
that the per-
son from
whom the
lands were
craved to be

HENRY RAMSAY called William Damperton to hear and see the lands of N. be decernit be decret of the Lords, lawfully redeemed as use is. The said William *answered*, the same should not be, because the heritable possessor of the lands, viz. his son, was not wairnt to the redemption of these lands, and that he was but liferenter of the same, and so that he could not remove and overgive these lands, property, and possession thereof ; and seeing the heritable fiar was not wairnt, as said is, the lands should not be decernit lawfully redeemed, and offered him to prove sufficiently his allegiance, and desired an term thereto.

THE LORDS admitted the exception relevant to the proof, notwithstanding the other parties contradiction; and the same was practised of before in a cause of redemption of land, movit betwixt the Laird of Polmeis and Mr Alexander Livingston of Dunipace.

Fol. Dic. v. 1. p. 136. Sinclair, MS. p. 29.

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redeemed, was only liferenter by reservation, and his son the fiar was not called.

1586. *January.*

HOG against LAIRD OF WACHTOUNE.

THERE WAS one called Hog, that pursued the Laird of Wachtoune to hear and see ane yeird of land lawfully redeemed, the same being analzied and wadset by this Hog to the Laird's forbear. It was *answerit* that the pursuer ought to have wairnt another person called Mr Patrick Hepburn, to whom the lands were disponed in second alienation be the Laird's predecessors, and this Hepburn was in possession of the same, and so he that was possessor of the ground, ought precisely to have been wairnt. *Answerit*, According to the act of Parliament, Ja. III. cap. 27. that lands that are given under reversion and sold to another person, that the first seller should have recourse to the same lands sold be him under reversion, to whatever hands the said lands come, as against the first buyer; sua the defender would have inferrit, that be reason of this act, the second buyer and possessor of the land behoovit to have been wairnt. It was *answerit*, That the meaning of the act was otherways, that there needed no other to be wairnt but the first buyer, and who gave the reversion, *et non potest ille conditionem primæ alienationis deteriorem facere*. THE LORDS repellit the exception, and fand be interlocutor, that he to whom the reversion was given, needed not to wairn any other, but such as gave the reversion, and to whom the first alienation was made.

Fol. Dic. v. 1. p. 136. Colvill, MS. p. 415.

No 52.
Found that a person to whom a reversion is given, need not warn the present possessor, but him only who granted the reversion, or his heirs.

1610. *November 22.*

LORD SANQUHAR against LAIRD OF CLUNIE.

MY Lord Sanquhar pursued the Laird of Clunie Creichton, as heir to his father, to hear and see certain lands, wadset by the Lord Sanquhar's father to Clunie's father, redeemed. Clunie *alleged*, that no process could be granted upon this order, because all parties having interest were not warned and summoned, especially Clunie's sister, who was infest in the lands, and confirmed by the King, and in possession. It was *answered*, that my Lord Sanquhar was not obliged to know her infestment, seeing it succeeded not from his father or himself, neither was it confirmed by any of them; and that it was sufficient to him to call the heir of the granter of the reversion, in respect of which answer the LORDS repelled the exception.

Fol. Dic. v. 1. p. 136. Haddington, MS. No 2004.

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No 53.
Found in conformity with the above.