

1581. *March.*GLENCAIRN *against* PORTERFIELD.

No. 3.

In reduction of a vassal's right by the superior's heir, the Lords refused to sustain process, till the pursuer should be infest in the superiority.

The Earl of Glencairn pursued Mr. Porterfield, son to umquhile Mr. John Porterfield, to hear and see the infestment made by the said Earl's predecessor of the place, tower, and fortalice, of Dowhill, with certain lands adjacent thereto, to be reduced, revoked, and rescinded. The reason of the summons was, that Mr. John Porterfield made a bond and obligation, after the infestment was given by the Earl's goodsir, that he should not receive or fortify the Earl's enemies within the place of Dowhill; the whilk was alleged to be done by the defenders, and so had contravened, and therefore the infestments be reduced. And as the summons contended the property to be consolidated with the superiority to the Earl's behoof, it was alleged by the said Porterfield, that the said Earl had no action to pursue the reduction of his infestment, because that he libelled not he was infest, seised, or retoured, in the superiority of the said lands, but libelled him only to be heir general, which was not sufficient to give him power to reduce the defender's infestment, and to make consolidation, except he would allege that he was infest in the superiority of the said lands. The which allegiance the Lords found relevant, and found, except he was seised and retoured in special, he could have no action as general heir.

Colvil MS. p. 324.

1583. *July.*GIB *against* HAMILTON.

No. 4.

An apparent heir may continue his predecessor's possession, and, being ejected, may sue an ejection, without being served heir.

James Gib of C. pursued James Hamilton of Livingston for the violent ejection of him furth of the lands of B. and libelled, that his umquhile father, Robert Gib, was in possession, and after his decease, his umquhile mother continued in possession, as conjunct fiar, by the space of two years thereafter, and immediately after the decease of his mother, he continued still in possession, as heir and successor to his father. It was objected, That he could have no action to pursue as heir and successor to his father, because, at the time of the ejection, he was not served, retoured, nor seised in the lands, but his title and instrument of sasine produced was but *in anno* —, and so he had no title at the time of the alleged ejection. To the which it was answered, That first he libelled possession as heir and successor, and the possession only was in itself sufficient to have defended him from violent ejection; and also, his sasine, whereintil he was seised nearest heir to his father and mother retrotrahitur, and so having respect to the said James's possession, continued into his person after the decease of his father and mother, and his supervenient right of sasine, *post litem inchoatam ex causa de præterito*, his title ought to stand, and he has qualified sufficient title. The