

REDUCTION.

13495

fuit factum partis et non iudicis. THE LORDS admitted the libel and reply. Darum hoc videbatur nonnullis Dominorum, cum de praxi nostra decreta semel lata in rem iudicatam transeunt, et paratam executionem habeant, sive bene sive male lata fuerunt, nec obstabat processus et inchoata reductionis intentio. THE LORDS therefore, notwithstanding of the admitting of the summons and reply, referred the modification of the profits to themselves, quia bona fide egisse videbatur is qui interposito iudicis decreto etiam invalide intromissit.

No 6.

Fol. Dic. v. 2. p. 327. Colvil, MS. p. 358.

1583. November.

SWAN against RANKIN.

SWAN pursued Rankin for reduction of a sasine of certain tenements in Glasgow. *Excepted* against the summons, That the pursuer could not crave the same to be reduced as was libelled, because the sasine made mention that it was given by virtue of award of court of the Provost and Bailies of Glasgow; which award of court should have been called *principaliter* to be reduced as well as the sasine which was relative to it. THE LORDS *una voce* assolizied a libello.

No 7.

Spottiswood, (REDUCTION.) p. 266.

* * * Colvil reports this case :

THERE was one called Swan that pursued one Rankin for production of a sasine of certain tenements of land within the town of Glasgow. It was *excepted* against the summons, That the pursuer could not pursue the reduction dictæ sasine prout libellatur, because the sasine made mention, and it was expressed in the same that it was given by virtue of award of court of the Provost and Bailies; and so it being relative to the said award of court, and making express mention of the same, except it had been called *principaliter* to be reduced as well as the sasine's self, the libel could not infer or conclude upon any reduction of the said sasine, and that namely when the said award was instantly produced before the Lords. THE LORDS, *una voce dicentes*, pronounced *definitive*, and assolizied *ut libellabatur*, that where any evident is called to be reduced, that all others to which it is relative must also be called.

Colvil, MS. p. 381.

Earl of MAR against My Lord ELPHINGSTON.

ALLEGED, No process, because all parties having interest are not summoned, viz. my Lady Kildrummy, who is infert publicly in the lands libelled holding of King. *Replied*, Not competent to the the defender, seeing she is not author

No 8.

No 8.

to him, and will not be obliged to warrant him, as was decided betwixt Polmais and Redhall. *Duplied*, Seeing she is infeft publicly, and may be harmed by this action, her infeftment being reduced, she should have been summoned thereto. *Triplied*, Her infeftment not being called for *principaliter*, but only falling in *consequentiam*, he needed not to call her; and the furthest that can be sustained for her who is liferenter, is to suffer her to compare for her interest, and concur with the defender. Repelled this allegation.

Spottiswood, (REDUCTION.) p. 269.

No 9.

1623. December 12.

CROMBIE against _____.

IN an action Crombie *contra* _____, the LORDS found, That an action and summons of reduction might be sought to be transferred against the apparent heir, and in the apparent heir of him against whom the reduction was intended; because, as the reduction might be at the beginning pursued against the apparent heir, so might it be transferred *pari ratione* in the apparent heir of the defender in the reduction, he dying after the intending of the action; albeit he was neither heir nor charged to enter heir.

Clerk, Hay.

Durie, p. 92.

No 10.

1625. July 29.

E. of WIGTON against GEDDES.

THE LORDS repelled an exception proponed upon a sasine at a removing, in respect of this reply, that the sasine proceeds upon a charter and precept, discerned to make no faith, and that notwithstanding it was *duplicith*, that the sasine stands unreduced cled with 15 years' possession.

Kerse, MS. fol. 207.

No 11.

Where a testament was sought to be confirmed, the cause was allowed to be advocated from the

1626. July 26. NISBETS, ARTHUR'S OYES against His RELICT, and M'MORAHAME against M'MORAHAME.

IN an action betwixt the Relict of Mr John Arthur and his Oyes, the Bairns of Mr Patrick Nisbet, the LORDS sustained an action of advocacy from the Commissaries of Edinburgh, of a testament of the said Mr John's, desired to be confirmed before the Commissaries by his said relict, who was his executrix nominated in the said testament, and discharged the said Commissaries to pro-