

bell's lands. Et ita Domini Consilii decreverunt definitive, reducing the said Laird's infeftment, and reponing the said Sir John in his heritage and state he was in before the forfeiture.

No 30.

*Fol. Dic. v. 2. p. 350. Sinclair, MS. p. 58.*

1610. February 2.

ELDER *against* FERGUSSON, and LORD CHANCELLOR *against* SHERIFF of MORRAY.

No 31.

THE infeftment of lands being reduced against the proprietor thereof, the reducer using warning against the possessors, it will neither be necessary to him to warn the party whose infeftment was reduced, if he had not possession, neither will the subaltern infeftments, granted by him whose right is reduced, defend in the removing, those to whom they were granted, albeit they were not called in the reduction.

In this case was remembered a practick passed between my Lord Chancellor and the Sheriff of Murray, wherein the Sheriff's infeftment being reduced upon a clause irritant, and the Chancellor warned Coliburne, son to Andrew Coliburne, who defending himself by infeftment granted to him by his father, who was infeft by the Sheriff, his allegiance was repelled, in respect of the reduction of the Sheriff's infeftment, albeit Andrew Coliburne, who was heritably infeft, and in possession, was not called thereto.

*Fol. Dic. v. 2. p. 350. Haddington, MS. No 1780.*

\*\*\* Similar cases were decided, 4th June 1611, Bishop of St Andrews *contra* His Vassals, No 137. p. 6714, *voce* IMPROBATION, and 13th July 1613, Laird of Polwarth, No 5. p. 9057. *voce* MINOR NON TENETUR.

1623. March 4.

WOOD *against* WOOD.

WOOD of Craig having obtained a decret against the Executors of one Ker, who was his debtor, and having put them to the horn, thereafter pursues one James Wood, who was cautioner for the executors in the confirmed testament, to make the goods confirmed forthcoming, for satisfaction of the debt contained in his sentence. The defender, who was cautioner, compearing, proponed an exception, that the whole goods of the testament were exhausted by lawful sentences, recovered *debito tempore* by true creditors. THE LORDS found this exception could not be received, being now proponed by the cautioner, seeing, in the action whereupon the pursuers had recovered sentence against the executors, the same was proponed by them, and admitted to their.

No 32.

A cautioner for an executor was not allowed to propone exhausting, the principal having proponed it and succumbed.