

allege that his interest was known to the pursuer of the reduction, by intimation, or some other legal mean. He who excepted upon an infestment of lands, *cum decimis inclusis*, and many years possession by virtue thereof, cannot be elided by a reply, that the pursuer, and his predecessors and authors, have been many years in possession of the teinds controverted, by uplifting a great part of the teinds *ipsa corpora*, and receiving of payment of an yearly duty for the rest from the defender, unless he offer to prove the reply by writ or oath of party, because the Lords will not take away a valid right, clad with possession, by probation of witnesses.

In that same cause the LORDS would not admit an irrelevant allegiance, albeit the contrary party made no answer to it.

Haddington, MS. No 2955.

No 35.

1626. December 13. EARL GALLOWAY against M'CULLOCH.

A PRINCIPAL tack being reduced, the sub-tack was not found to fall in consequence, being consented to by the pursuer, who ought therefore to have called the sub-tacksman in the reduction of the principal tack.

Fol. Dic. v. 2. p. 351.

No 36.

* * This case is No 62. p. 7833. JUS TERTII.

1629. January 22. FAIRBAIRN against KELLO.

HENRY FAIRBAIRN being warded in the tolbooth of the Canongate for not payment of a sum owing to Bartholomew Kello, contained in his bond, and escaping out of ward, and sentence recovered against the Bailie thereupon for payment of the debt; thereafter the bond is desired to be reduced by Fairbairn, upon a reason of his minority; and the creditor having summoned the pursuer, he being out of the country, to give his oath *de calumnia* upon the reason, with certification; and this reduction being desired to be transferred in the cautioner for the jailor, who was decerned to relieve the Bailies; it was found that it ought to be transferred, and that the cautioner might insist thereon, even as a cautioner might transfer a suspension, though the principal would not insist thereon, who raised the same, or as a singular successor might seek transferring of that which was competent to his predecessor; and albeit the raiser of the reduction were holden as confessed, upon his oath *de calumnia*, as would grant

No 37.

A debtor who had raised reduction of his bond on minority and lesion, was held as confessed; *de calumnia*. This found not to bar his cautioner from insisting in the action.

No 37. the defender's desire by his compearing, yet that ought not to prejudge the cautioner to insist and prove the reason.

Act. *M'Gill.*

Alt. *Nairn.*

Fol. Dic. v. 2. p. 351. Durie, p. 416.

1629. December 1.

VAUS against BUTLER.

No 38.

A decree being reduced, the horning fell of consequence, altho' the Officers of State interested for the escheat, were not called.

IN a reduction of a decret of removing, wherein the horning executed upon that sentence was called to be reduced *in consequentiam*, particularly as falling of the decret should fall; the LORDS found, to this reduction of the horning, which was but sought in consequence, as depending upon the decret of removing, that the King's thesaurer and advocate needed not to be called as in other reductions, where the horning is principally called to be reduced, and where there are special reasons libelled to reduce the horning; whereas there was no reasons libelled against the same, but only desired to fall in consequence, and which would ensue in law by the general inference, if the decret should be reduced, that all following thereon would fall; which general would be also effectual, albeit the horning was not specially craved to fall in consequence, to make the same to fall, as it is now when it is specially desired; and, as to the general inference, the King's officers need not to be called, so no more needed they to be called to the special.

Act. *Nicolson and Mowat.*

Alt. *Aiton and Stuart.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 351. Durie, p. 472.

* * * Spottiswood reports this case :

THE Laird of Hirdmeston assignee constituted by David Vaus, pursued a reduction against Mr George Butler, of a warning made to his cedent by the defender, and of a decret of removing following thereupon, as also horning, and other compulsorials *in consequentiam* only; whereas there were libelled reasons against both the warning and decret of removing. *Alleged*, No process, because all parties having interest were not cited, viz. the King's thesaurer and advocate, who behoved to be called to the reduction of a horning. *Answered*, If he had libelled any reason against the horning, and sought it to be reduced *principaliter*, the allegiance were good; but in respect he desired it only to be reduced *in consequentiam*, there was no necessity for calling them. The Lords were not all of one opinion. It was confessed by all, that if the summons had been conceived, to hear and see the horning, decret of removing, and all other things following thereupon, (generally) reduced, the King's officers needed not to have been called thereto; because, after the decret of reduction, there would have behoved a declarator of the nullity of the horning depending there-