

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-

on to follow, in which they would have been called ; but because he had libelled, to hear and see the warning, decret of removing, and horning following thereon, (particularly) reduced ; some of the Lords thought, that the King's officers should have been called, seeing the King might be prejudged of the casualty that had fallen to him through the horning, if it were taken away. Yet the most part repelled the allegiance.

No 38.

Spottiswood, (REDUCTION.) p. 270.

* * * Auchinleck reports this case :

IN a reduction of a decret of removing, whereupon horning followed, although the horning be called for to be produced, yet if no special reason of reduction be libelled against the horning, but to have them reduced and declared to fall *per consequentiam*, there is no necessity in this summons to call the treasurer and the King's advocate for their interests.

Auchinleck, MS. p. 186.

1631. February 17. L. CLUNIE against L. HARTHILL.

HARTHILL being pursued to remove from certain lands of the barony of Wairds, which were disposed to his predecessors by the L. of Wairds for the time, at the instance of Clunie, who had acquired a right to the whole lands of Wairds, from the Earl of Mar ; after that he had obtained a decret, reducing the L. Waird's rights and securities of the said lands, and Harthill defending himself with his heritable infestment of the said lands granted to him as heir to his father, who was also infest therein by the L. of Wairds, as heir to his father the defender's good-sire, who was also infest therein, as heir to his father, the defender's grandsire ; and, by virtue of these three succeeding rights, they were in immemorial possession of the said lands, which he *alleged*, was sufficient to defend him in this possessory judgment, aye and while his rights were reduced ;—and the pursuer *answering*, That his author's right being reduced, his behoved to fall, neither needed he to reduce these, which fell *in consequentiam*, they depending upon his author's right, which was found null and reduced ; and the defender *replying*, That he was not called to that reduction of his author's right, and so could not be prejudged thereby ;—the LORDS found, that the progress of the defender's heritable right and possession, excepted upon by him, could not maintain him against this removing, in respect his author's right was reduced, which decret of reduction extended also to reduce *in consequentiam* the whole writs depending thereon ; and found that this defender was not a necessary party to be called to that reduction, neither needed the pursuer to intent any special action *de novo* to reduce the same ; for these being rights only granted to be holden of the giver, and so base not holden of the superior, the

No 39.

The proprietor's infestment being reduced, subaltern infestments granted to possessors will not defend them in a removing, altho' they they had not been called to the reduction. See No 31. p. 14049.