

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.

No 39. reducer had no necessity to know the same, neither had he necessity to reduce these subaltern base rights; for if he should be put to reduce these subaltern rights, it should be endless labour; for such rights might pass from hand to hand, that it might prove impossible for any pursuer to find them all out; and therefore these base rights, not being acknowledged by the pursuer's self, nor becoming public, the pursuer needed not to know them, and so could not defend the excipient.

Act. *Nicolson.*Alt. *Mowat.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 350. Durie, p. 570.*

1664. November 18.

LOCHS, and the EARL OF KINCARDINE, *against* HAMILTON.

No 40.

Minors restored against a decree *in foro.*

HAMILTON, and her Authors, having obtained decret against Lochs, as heirs to their father, for a sum of money, and annuals thereof, after count and reckoning, and being thrice suspended, there are still decreets *in foro*: Lochs, and the Earl of Kincardine, now suspend again, and *alleged*, That in the count and reckoning there were several receipts of annualrent, which were not at that time in Loch's hands, but in the Earl of Kincardine's, whose father was co-principal, bound conjunctly and severally with Loch's father. The charger opposed her decreets *in foro*, and *alleged*, That Kincardine had no interest; for neither could the letters be found orderly proceeded, nor yet suspended against him; and whereas it was *alleged*, That the clause of mutual relief would force him to relieve the Lochs *pro rata*, he had a good defence, that they had not intimated to him the plea, and thereby had prejudged themselves of the defence upon the ticket in his hands. The suspenders *answered*, They were minors, and that Kincardine, having a clear interest, might chuse whether to defend them, or defend himself against them.

THE LORDS reponed them to the tickets now gotten out of my Lord Kincardine's hands; but declared there should be expense granted against them for all the decreets to which the chargers were put.

*Stair, v. 1. p. 226.*

\* \* \* Newbyth reports this case :

GEORGE BRUCE, father to the Earl of Kincardine, James Loch, and three other persons, having granted bond for L. 10,000 to the Lady Tulleallan, in life-rent, and to her children, James, Alexander, and Anna Blackadder, in fee; in *anno* 1641, James did assign his part, which is 6000 merks, to Anthony Boswall, who having obtained decret against the Executors of James Loch, they did suspend, upon this reason, that the Earl had paid to the Lady Tulleallan the sum charged for before the granting of the assignations; but the letters being