

the LORDS, and almost the whole members inclining to find the reason relevant and competent in the second instance, I reasoned, on the contrary opinion, *ab inconvenienti* to the inconvenient proponed for the wives, because *rerum judicatorum auctoritas firma immutabilis esse debet*; and if this which is now libelled be admitted, and the exception founded upon the first decret of removing be repelled, it shall not be possible to any man to obtain any sure decret against any woman clothed with a husband; because, after that she have compeared, and defended, and vexed the party both with delays and all manner of defences in her husband's time; albeit decret be obtained against her *in foro contradictorio*, yet, after her husband's decease, she shall have place to reduce the decret upon reasons competent in the first instance, and omitted *per* chance wilfully to give occasion for more play; and so it shall not be possible to a man to obtain a certain decret, and unreduceable against a woman clothed with a husband; notwithstanding whereof the LORDS sustained the reason of the findings; the rather because it was founded upon the deed of the defender's father to whom he was heir.

Fol. Dic. v. 1. p. 169. Haddington, MS. No 826.*

No 4.

1628. *January 25.* KENNEDY against M'DOUGALL.

IN a suspension betwixt Kennedy and M'Dougall, Kennedy being decerned, as lawfully charged to enter heir to her father, to pay a debt of her father's, which decret was given against her, she compearing and offering to renounce to be heir; and a term being divers times assigned to her compearing to produce the said renunciation, and failing to do the same, she was decerned as lawfully charged *in foro contradictorio*, as said is. This decret was suspended, upon production of a renunciation to be heir, which renunciation the LORDS found might be received by way of suspension, notwithstanding of the foresaid decret given against her compearing, as said is, without any other process for reducing of that decret, seeing the suspender was then, at the giving of the sentence, and yet was, at the time of reasoning of the suspension, still minor.

Act. Nivalson.

Alt. Primerosa.

Clerk, Scot.

Fol. Dic. v. 1. p. 169. Durie, p. 331.

No 5.

A decree against a minor, as lawfully charged to enter heir, being suspended upon production of a renunciation, the Lords found that this renunciation might yet be received by way of suspension without necessity of a reduction.

1632. *November 24.* HIND against L. WEDDERBURN.

ONE Hind pursues removing, as heir to his goodsire, who was infest in some husband-lands in Coldinghame, against L. Wedderburn and his tenants; and he defending and excepting, that his father had obtained decret of removing against this pursuer's goodsire, to whom the pursuer is heir, by virtue of which decret his father, during his lifetime, and since this defender, hath been in con-

No 6.

A nullity proponed by way of reply, was refused to be sustained against a standing decree, altho'

No 6.
the nullity was, that it proceeded upon an infestment of kirk lands not confirmed, which can produce neither action nor exception.

tinual peaceable possession of the lands libelled these thirty-four years by past ; therefore the pursuer, this decret standing, cannot pursue removing. And the pursuer *replying*, That the decret cannot be received to stay this removing, except that the defender would allege some right by virtue whereof he bruiks, and by virtue whereof the sentence was obtained ; which, if he will allege, he will oppone a nullity in law, viz. that it is an infestment of kirkland not confirmed, which can neither produce action nor exception. Likeas John Stuart, now Laird of Coldingham, and author of this pursuer's right, compeared and concurred with this pursuer, and adhered to this reply, and assisted the pursuit, against whom no decret is obtained.—THE LORDS found, in respect of the said decret, clothed with so long possession, obtained against this pursuer's goodsire, to whom he was heir, and pursued by him *hoc titulo*, was standing unreduced, therefore that the pursuit could not be sustained, notwithstanding of the said reply of nullity, which is not receivable by exception or reply ; for it was not found necessary that the defender should except upon his right, so long as the said decret, clothed with so long possession, stood unreduced : And the LORDS respected not the superior's concurrence, to sustain a pursuit of removing at another party's instance, he not being pursuer.

Act. ———.

Alt. *Nisolson.*

Clerk, *Scot.*

Fol. Dic. v. 1. p. 169. Durie, p. 652.

SECT. II.

Is Reduction requisite of Decrees of Apprising ?

1627. February 24.

COUPER *against* M^cMARTIN.

No 7.
The Lords refused to take away a standing comprising *ope exceptionis*, though it was for an heritable debt never made moveable by a charge.

WHEN comprisings are led against apparent heirs that will not enter, there must two charges be used, a general and a special. The first is *præparatoria actionis*, and is *contra personam* ; the last is *præparatoria executionis*, and is *contra fundum* : For the general charge is to make a man enter heir to his father, &c. that sicklike action may be had against him, as against his father, &c. and this makes the party, charged to enter heir, to come in place of his father, and is the ground of the sentence of registration, &c. following thereon. After the obtaining of a sentence against him, as lawfully charged to enter heir, then the special charge is used, charging him to enter to such and such lands, after which charge comprising followeth. And this order in charging must be kept in all comprisings ; so that the special charge cannot go before sentence be re-