

where parties are mutually obliged to others in a contract, the contravening of one of the parties imports not *distractum*, but only action *ad implementum*, or *damnum et interesse*. But the contract can never be dissolved without the consent of both parties: *Nam contractus iisdem modis dissolvuntur quibus contrahuntur*. And, as to that part of the reason bearing that there was no other final or impulsive cause in the contract, but only the mutual observance, it was contrary to the tenor of the contract, bearing these other causes, *viz.* The continuance of the honour and dignity of his house, in the name of Home; and the gratuities and benefits done to him by the Earl of Dumbar.

The first thing that was called in question, in this cause, was, Whether or not the first decret reductive, being given upon a reason consisting *in jure*, and found relevant by the judge, (who is obliged in duty to look to the relevancy of a reason, though the defender be absent,) might ever thereafter be quarrelled. Which the Lords, all in one voice, found might very well be, the party defender being absent.—*22d February 1634.*

Thereafter it was alleged by the defenders, That the pursuer was served heir-male to the said James, late Earl of Home, in whose favours the decret reductive was given, and so could never quarrel the same decret. Replied, The decret being given in prejudice of the heirs-male, and in favours of the heirs of line, he, as heir-male, might very justly quarrel it; and that so much the more, as there was no execution to follow upon this decret. The Lords repelled the allegiance *hoc loco*, reserving it to be discussed whenever the pursuer should intent any action whereupon execution might follow.—*28th February 1634.*

After this, the defenders passed from their compearance; and the Lords advised the reason, which they found relevant and proven, after mature deliberation and reasoning among themselves.—*4th March 1634.*

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1634. *March 5.* ALEXANDER BLACK *against* The LAIRD of PITMEDDEN.

ALEXANDER Black having comprised certain lands, charged the Laird of Pitmedden, superior thereof, to infest him. He suspended upon this reason, That he was content to undergo his debt, and come in his place, which he might do by virtue of the Act of Parliament, Ja. III. Parl. 5, c. 36. Which reason the Lords sustained.

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1634. *March 26.* DOUGLASS *against* DUNBAR.

THE like found, (as in the case Ross against Robertson, 25th June, 1629,) between Douglass and Dunbar, bailie of Taine;—for, when one is convened *ex proprio delicto*, there needeth no other to be summoned thereto.

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