

also all and whatsoever other writs concerning the said lands made by the said debtor to the defender, since the said inhibition :—which clause being quarrelled by the defender, that it could not be sustained ; seeing, by action of reduction, nothing can be called to be produced, or reduced, but only special writs expressly and particularly condescended upon ; for these general clauses, albeit they be sustained in improbations, yet have never been sustained, nor ever can be, in reductions, to reduce writs for not production, not specially called for. This exception was repelled, and the certification of the general clause sustained and granted ; for the Lords reduced all writs not produced, which were made since the inhibition of the lands libelled, to the defender by the debtor ; so that the time was special in the date of the writs, *viz.* since the inhibition, which was produced ; and the subject was special, *viz.* the lands libelled ; and the persons were special, *viz.* by the debtor to this defender. Therefore the general clause being so qualified, was sustained.

*Act. Advocatus. Alt. Stuart. Scot, Clerk. Vid. 18th January 1637, E. Hume. Page 741.*

1634. *December 19. CAMPBEL against CHALMBERS.*

A TUTOR pursuing the mother of his pupil, for delivery of the pupil, her son, to him, in whose keeping the pupil was ever since his father's decease ; the said pupil, now at the time of this pursuit, being divers years beyond the years of infancy ; and the mother compearing, and alleging that he had chosen curators, and producing the act of curatory ; to which defence the curators adhered ; and alleging, that, in respect thereof, the said act of curatory being standing, that the tutor's office ceased, and was expired, and so had no interest to pursue for delivery of the bairn ; and the tutor answering, that that act was fraudfully done, seeing he offered to prove that his office was not expired, and that the bairn was still within the years of pupillarity, so that his tutory yet lasts, and that he was still under the danger of administration ; and the defender duplying, that the act of curatory standing, the curators had the charge ay and while the act of curatory were reduced ;—the Lords repelled that allegiance, and found the tutor's reply relevant, *viz.* that the bairn was yet within 14 years of age, and so within the years of pupillarity, so that his tutory (that being proven,) yet continued ; and that he had reason to pursue for delivery of the pupil, and that he had no reason to reduce the act of curatory, the defender never alleging that the bairn was past the years of tutory : for the bairn, being proven to be yet within the years of tutory, he needed never to reduce the act of curatory, the length of which process might endure while his office were expired ; and the danger of the not administration of his office, in the meantime, might tend to his prejudice.

*Act. Gibson. Alt. Miller. Scot, Clerk. Page 742.*

1635. *January 23. PATRICK MUG against CAMPBELL.*

PATRICK Mug, for the sum of 500 merks, having comprised his debtor's lands,

and being thereupon infest, obtains decret of removing before the sheriff of Perth, against one Campbell, he not compearing; who suspends, that he was infest before the comprising; and the other opponing his decret standing, and, notwithstanding thereof, answering also, that he would be content to receive that reason, and the verification thereof in this same place, to be tried *hoc ordine*, if his reply thereto shall be also received in this place, *viz.* that the common debtor was inhibited by the compriser long before any right made to this suspender; and which, he alleged, was as great reason should be received *hoc ordine*, against that infestment, as the said infestment might be received against the decret standing against this same party, and against this comprising also, and infestment standing, obtained by him upon his great charges, being a poor man, and for a small sum; which required summary process; and if not, that they both alike should be either put to reduce, or else both should be summarily discussed. Notwithstanding whereof, the reason of suspension was instantly received, the infestment being instantly produced to verify the same; albeit the suspender's possession was not instantly verified; and the compriser was put to reduce upon his inhibition.

Page 744.

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1635. *March 4.* LADY BORTHWICK *against* The LAIRD of GALLASHEILLS.

LADY Borthwick being infest in the lands of Coblehaugh and others, and pursuing the Laird of Gallasheills for the mails and duties of certain of these lands; who defending himself with a right of a tack of the same, set to him by Walter Cairncross, son to umquhile ——— Cairncross, which setter foresaid was heir to his umquhile good-sir, who was heritably infest in these lands by the umquhile Lord Borthwick, heritor of the same: And the Lady replying, that he could not clothe himself with any right flowing from Walter Cairncross, because sentence of reduction was obtained at Gallasheills's own instance and the E. of Lothian's instance, against the son and apparent heir of the said Walter, and also against the Lord Borthwick, husband to this pursuer, reducing the Lord Borthwick's heritable infestment of the lands, and reducing, *per consequentiam*, expressly also the heritable right of the said lands, made by the Lord Borthwick to the said Walter Cairncross; after the which sentence reductive, the said excipient was decerned by a decret-arbitral betwixt him and the Earl of Lothian, and this pursuer's husband, to quit all the rights which he had to the lands, in favour of her said husband, that he might be infest validly in the same lands of the lordship of Borthwick; and that this pursuer, spouse to the said lord, might be infest in conjunct-fee of the lands decerned thereby; likeas, accordingly, she is infest in thir lands libelled, acclaimed as a part of the lands provided to her in life-rent; in respect of which decret of reduction, obtained at his own instance, and deed done by him depending thereon, he could never thereafter lawfully acquire any new right of the lands, the rights whereof were reduced by that sentence reductive, procured by himself, and the deeds done thereupon by himself depending thereon: And the defender answering, that he comes not against any right which ever he had devolved in the person of the Lord Borthwick, after that sentence; but that it was lawful to Cairncross, against whom that sen-