

tence was recovered, or his heir, to reduce that decret redutive, upon good reasons, relevant in law; so it was lawful to this excipient to acquire that right from them, wherein he cannot be prejudged, if the right be in law valid to maintain his possession thereby, notwithstanding that he had obtained the sentence reducing that right; and which sentence redutive he now desired to be reduced, to the effect the heritable right, made to the said Walter Cairncross, might remain and be tried to be good and lawful, and not to fall for any reason contained in that sentence, whereby it was reduced: And he alleged, that it were great injustice, that, because the right was become in his person, therefore that it should not have the course and effect of a good and sufficient right,—it being so in itself,—but that it should fall, because he had acquired it: likeas he further alleged, that he was but tacksman to the said Walter Cairncross, and so tenant only to him, and that the heritable right subsisted in the said Walter's own person; for which Walter, the advocates and procurators compearing in this process declared they compeared expressly, and proponed the exception for him, and insisted in the said reduction of the decret redutive at his instance, the same being specially raised in his name: And the pursuer answering, that, albeit Walter Cairncross be reducer, yet his name cannot be obruded against the pursuer, because he was denuded of all right competent to him, in favours of Gallasheills, who can never be heard to evert his own deed, as said is. The Lords repelled the foresaid exception, either proponed for Gallasheills or for Cairncross, in respect of the reply, viz. That Cairncross was absolutely denuded of all his right in favours of Gallasheills; and found that Gallasheills could not vailably nor dutifully acquire from him his right, thereby to prejudge the effect of the sentence, reducing the same right obtained at his own instance. Which sentence he was found he could not quarrel, himself, neither directly nor indirectly; nor upon any ground of right acquired by him from any person, which might lawfully have impugned the same; albeit purchased by him after that sentence, and not being in his person at the time of the obtaining thereof, nor yet being acquired by him at any time, when he contracted thereafter with the Lord Borthwick, no more than if the said rights had been then standing full in his person, and as if the right had been acquired by him the time of the sentence, and when he contracted thereafter with the Lord Borthwick: *Quo casu*, he could not have come against the decret and deeds thereafter done: Even sicklike the Lords found he could not be heard to come against the same, upon any purchase of any other man's right acquired thereafter; for, albeit the party principal, to whom the right belonged, might have quarrelled that decret which was given against him, yet it was not found alike competent to that party who had obtained the sentence, and had transacted therefore.

*Act.* Nicolson and Mowat. *All.* Advocatus, Stuart, and Cunninghame. Hay, Clerk. *Vid.* 5th March 1629, La. Borthwick; 11th December 1634, L. Lenoris.

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1635. March 18. LADY BORTHWICK *against* The LAIRD of GALLASHEILLS.

THE Lady Borthwick pursuing Gallasheills for reduction of a bond of 10,000

merks granted to him by the umquhile Lord Borthwick upon a reason of interdiction, and producing the extract of the interdiction registrat; the defender alleging, that the principal interdiction should be produced, because he offered to improve the same, therefore this extract ought not to be respected, as is provided by the 118th Act Par. 7. K. Ja. VI. which appoints this objection to be received by way of exception;—the Lords found no process ought to be granted upon this extract, while the principal were produced, in respect the defender proponed presently improbation, which the Lords found ought to be received by way of exception, to stay further process, in respect of the said Act of Parliament: but the Lords doubted, and decided not, if the principal had been produced, if the defender might be heard to propone any other exception *in causa*, or against the interdiction, except the said exception of falset; as they appeared to incline that he could not be heard to do.

*Act.* Nicolson. *Alt.* Stuart. Hay, *Clerk.*

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1635. *June* 17. IRVIN *against* The COMMISSARY of DUNKEL.

ONE Irvin pursuing the Laird of Weym and his other curators, for account of their intromission, &c.; in this process compeared the commissary of Dunkel, who was constituted factor by the curators to intromit with some of the goods belonging to the minor, for a certain sum which the commissary was obliged to pay to the curators for the same; which process, after divers times calling thereof, the said commissary compeared therein, and took a day to account, and nominated auditors for that effect; and, at the day appointed for accounting, being desired to give in his account, he declared he would not compear in that process, seeing he was not a party called, but only the curators were called, to whom he would remit to give in their own accounts, and nominate their own auditors, and that he would not meddle therein;—the Lords, in respect the commissary compeared in the process, *et suscepit in se judicium*, and took diets therein, found that he could not *defugere susceptum*, unless he would pay such a pecunial sum, which instantly the Lords modified to the party for his expenses, through his delay of process.

*Act.* ———. *Alt.* M'Gill. Hay, *Clerk.*

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1635. *July* 22. MOSMAN *against* The EARL of ABERCORN.

ONE Mosman, donatrix to the escheat of one Nisbet her husband, after general declarator, pursuing a special against the Earl of Abercorn, as intromitting with the goods of the umquhile Lady Abercorn his mother, who was debtor to the said husband in 500 pounds, for payment of the said sum to her, as donatrix;—the Lords sustained this action, notwithstanding the defender offered to purge his intromission, alleging that his umquhile mother's escheat was gifted and declared in favours of Sir James Fullarton, from whom he had obtained as-