

REDUCTION.

13505

proceeded upon the resignation of any of Celestine's descendants libelled, &c. they should produce them.

No 32.

Spottiswood, (REGALITY.) p. 271.

* * Durie's report is No 42. p. 6636., *voce* IMPROBATION.

1663. *January 16.* ELLIOT *against* RIDDEL.

ARCHIBALD ELLIOT of Medlestaid, wadset his lands to John Riddel of Muiseily, for a sum of money under reversion, and with a clause irritant, bearing, That if precisely at the term the money should not be paid, in that case, the reversion to be null; whereupon a declarator is obtained for not payment, before the English Judges. There is a reduction pursued of this decret, upon this ground, That he was not compearing in this decret; and though in the minutes of process he was marked compearing by his procurator, to whom a day was assigned for purging the failzie, yet at that time he could not compear, because he was lying bedfast; and it were against reason, that the defender by his calamity, should be under such disadvantage, the lands being near double worth the money.

No 33.
Reduction of a decree of the English judge, who had declared an irritancy while the party was prevented by sickness from appearing personally.

THE LORDS found the reason of reduction relevant, in respect of the condition of the pursuer for the time, by sickness, and of the exorbitant advantage the defender would have, if the decret should stand.

Gilmour, No 64. p. 48.

1665. *December 15.*

GRANTS and ROW *against* VISCOUNT of STORMONT.

DAVID Viscount of Stormont having obtained a decret of reduction against Grants, of their right of certain lands, for not production. Grants and ——— Row, did reduce the said decret against ———, now Viscount of Stormont, upon production of the rights called for in the first decret; and in this reduction, the LORDS did suffer and admit the said Viscount to insist in the said first reduction, he producing the said David Viscount of Stormont his right and instructing that he represents him; though the said first process was not transferred in the person of the said Viscount *active*, and against the pursuers of this reduction *passive*; and the summons of reduction, whereupon the first decret proceeded, was not produced; which the LORDS allowed to be supplied by production of the decret, and a paper containing such reasons of reduction, as Stormont thought fit to give in; and that in respect it was the fault of the defenders in the reduction, that the writs were not then produced; and they and those having right from them be-

No 34.
Effect of production for non-production.

No 34.

ing reported, it was just that Stornont and his heirs should be likewise reported.

Dirleton, No 7. p. 4.

1666. January 2.

against WILSON and LODWICK CALLENDER her Spouse.

No 35.

In a reduction *ex capite inhibitionis* the defender producing a sufficient right to exclude the pursuer, the parties were ordained to dispute their rights, as if it had been in a general reduction.

_____ pursues a reduction *ex capite inhibitionis*, against Jean Wilson, and Lodwick Callender her spouse, of all dispositions of certain tenements in Leith, made by the common author since the inhibition. It was *alleged* for the defenders, Absolvitor from this reduction, because the defenders produced an apprising led against the common author before the inhibition, and which is sufficient to maintain the defenders' right of the lands in question, and to exclude all rights and interest the pursuers can have thereto. It was *answered*, *Non relevat*, seeing the pursuer is not insisting in a reduction of all right competent to the defenders, upon general reasons, either bearing expressly, or by equivalence, that the pursuer had good right, and the defender had no right; but the pursuer is insisting specially upon particular rights called for, and upon a special reason, viz. that they were after the pursuer's inhibition; so that albeit the defender have another better right than the pursuer, it will not be prejudged by this reduction, nor can it hinder the conclusion of this summons, viz. that the dispositions are null, as being *post inhibitionem*. It was *answered* for the defender, That his defence is relevant, for he alleging and producing a sufficient right to the lands whereof the dispositions are called for to be reduced, it takes away all interest in the pursuer to these lands; and therefore he may justly thereupon exclude the pursuer from troubling the defender in this, or any other reduction, which can have no effect. It was *answered*, That if this ground were laid, no reduction could be sustained of any particular right, called for to be reduced, unless the pursuer did reduce all rights that the defender could produce, which is neither just nor conform to the custom; because pursuers may have necessity to reduce some rights, in respect of the probation, which may be lost, as either oaths of parties or witnesses, and yet may not be in readiness to insist against all the defenders' rights, not having found out theirs, or their authors' progress; but the Lords may reserve the other rights, seeing there is no possession, or other effect craved, but only *declaratoria juris*.

" THE LORDS, in respect the defenders were very poor, and their case favourable, ordained the pursuer to insist upon what he had to allege against the defender's apprising produced, as if it had been contained in the reduction; but it is not to be laid as a general ground, that in no case reduction may proceed, albeit it exclude not all the rights produced in the defender's person, especially if any singularity, as to the probation, appear.

Fol. Dic. v. 2. p. 327. Stair, v. 1. p. 331.