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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.