

REDUCTION.

13507

1666. February 16. JAMES BORTHWICK *against* JANET SKENE.

JAMES BORTHWICK having obtained reduction of Janet Skene's life-rent-right, as *a non habente potestatem*, obtained payment of a term's rent before the decret of reduction. Janet pursues for that term, and alleges that the decret of reduction could not be effectual till it were pronounced, albeit it bear her right to be null *ab initio*, yet that is but *stylus curiæ*. It was answered, That the tenant paid *bona fide*, after reduction obtained and intimated to him, and that the Lords may *ex arbitrio*, find the effect of the reduction either to be *a sententia*, ~~if it is~~ *contestation*, or a citation.

"In this reduction the LORDS assoilzied the tenant from this term, though before sentence."

Stair, v. 1. p. 357.

No 36.
Reduction found to extend to a term before sentence.

1666. February 20. LORD SALTON *against* LORDS PARK and ROTHEMAY.

In a reduction *ex capite interdictionis*, the LORDS repelled the defence of a preferable exclusive title in the defender, reserving the same *contra executionem*.

Fol. Dic. v. 2. p. 327. Stair.

* * This case is No 97. p. 10420., *voce* PERSONAL and TRANSMISSIBLE.

* * The like was found where the reduction was of a fraudulent disposition *inter conjunctos*, 29th November 1671, Whitehead *against* Lidderdale, No 446. p. 12557., *voce* PROOF.

1666. December 7. URQUHART *against* FRASER.

A WADSET being granted by Sir Thomas Urquhart, elder and younger, of the lands of Brae, to Sir James Fraser, for 24,000 merks, and the granters of the wadset being obliged to warrant the rental (besides customs,) to be twenty chalders of Ross bear, and to furnish tenants, and to cause them pay the said duty, and for each boll undelivered 10 merks, Sir Alexander Urquhart of Cromarty, donatar to the escheat of the said Sir Thomas, elder and younger, pursues the heir and executor of the wadsetter, for the surplus of the rent of the said lands, exceeding the rent of the foresaid sum, for diverse years, in respect the contract was usury. It was alledged, by the act of parliament 247, *anno* 1597, the creditor cannot pursue for the superplus of the annualrent but by way of reduction of the usury bond, or contract, with con-

No 38.
Consent of the King's Advocate required to a reduction for usury.

No 38. course of his Majesty's Advocate. It was *replied*, that *rei persecutoria* he had interest to pursue for what was *indebite* paid.

THE LORDS found, that the process could not be sustained without consent of his Majesty's Advocate; the act of parliament being express, that the creditor cannot repeat the exorescence above the annualrent, unless he concur with the Advocate to reduce; which appeareth to be provided of purpose to oblige the creditor to inform and concur with the Advocate for reducing so unlawful pactions.

Dirleton, No 56. p. 23.

1667. June 12. DALRYMPLE against _____

No 39.

A REDUCTION of a testament being pursued, *ex eo capite*, that the defunct was *fatuus & incompos mentis*, and the relevancy being questioned, because no act or circumstance or qualification was libelled, inferring the defunct to be in that condition,

THE LORDS, ordained the pursuer to condescend.

Dirleton, No 76. p. 31.

Alt. *Wallace.*

Hog. _____

No 40.

1667. December 11. RODGER HOG against THE COUNTESS of HOME.

MR RODGER HOG insisting in his reduction, mentioned yesterday, No 109. p. 7039. *voce* INHIBITION, upon his inhibition the Countess of Home alleged, that she had right from apprisers, who would exclude the pursuer's right and inhibition, and would defend herself thereupon, and not suffer her right to be reduced *ex capite inhibitionis*, and might thereby exclude the pursuer from any interest. It was answered, that the reduction being only upon an inhibition, there are no rights called for, but rights posterior thereto, and it cannot prejudice any prior right, which the pursuer is content shall be reserved.

Yet the Lords admitted the defender to defend, upon any prior right, that might exclude the pursuers right,

Fol. Dic. v. 2. p. 327. Stair, v. 1. p. 492.

1672. June 21.

CREDITORS of the LAIRD of CRAIG against THE HERITORS of the Lands.

No 41.
In a reduction, calling for rights made to the

IN a reduction at the instance of some Creditors of the Laird of Craig, for reduction of a disposition granted by the Laird of Craig and Earl of Dundee.