

infest holden of the superior; and Grantullie was permitted to dispute and propone that he could have alleged against the inhibition and action of reduction if he had appeared.

No 107.

*Fol. Dic. v. 1. p. 475. Haddington, MS. No 2603.*

1667. July 16.

ELES against WISHART and KERTEL.

No 108.

INHIBITION does not strike against redemptions of wadsets, renunciation of annualrent rights, and other redeemable rights.

*Fol. Dic. v. 1. p. 475. Stair. Dirleton.*

\* \* \* This case is No 85. p. 7020.

1667. December 10. MR ROGER HOG against THE COUNTESS OF HOME.

No 109.

MR ROGER HOG having appraised certain lands from the Laird of Wauchton in Alcambus, which were sold to Wauchton by the Earl of Home, with absolute warrandice; upon which warrandice there was inhibition used; whereupon Mr Roger pursues reduction of an infestment of warrandice of these lands, granted by the Earl of Home to my Lady, in warrandice of the lands of Hirsil, and that because the said infestment of warrandice is posterior to the inhibition. The defender *alleged*, That there could be no reduction upon the inhibition, because there was yet no distress, which with a decret of the liquidation of the distress, behoved to precede any reduction; and albeit there might be a declarator, that my Lady's infestment should not be prejudicial to the clause of warrandice, or any distress following thereupon, yet there could be no reduction till the distress were existent and liquidate. The pursuer *answered*, That a reduction upon an inhibition was in effect a declarator, that the posterior rights should not prejudice the ground of the inhibition, for no reduction is absolute, but only in so far as the rights reduced may be prejudicial to the rights whereupon the reduction proceeds.

A reduction *ex capite inhibitionis* was opposed, because the alienation was conditional. The reduction was sustained to take effect when the condition should be purified.

THE LORDS sustained the reduction to take effect, so soon as any distress should occur.

*Fol. Dic. v. 1. p. 476. Stair, v. 1. p. 491.*

\* \* \* Dirleton reports this case :

1667. December 11.—AN inhibition being served upon an obligation to warrant; a reduction was thereupon sustained, though it was alleged there was neither decret of eviction, nor liquidation of distress; the pursuit being only

No 109. a declarator, and the decret being only effectual after eviction and liquidation; which accordingly was declared by the Lords.

Betwixt the same parties, it was *alleged*, That the defender's right was ratified by a creditor, who had a comprising expired; so that the pursuer had no interest to question the defender's right; it was *answered*, That the pursuer desired only such right as was after the inhibition to be reduced, without prejudice of any other, which he could not nor was obliged to debate *hoc loco*.

THE LORDS, notwithstanding found the allegiance relevant. See LEGAL DILIGENCE.—REDUCTION.

*Dirleton, No 116. & 117. p. 49.*

No 110.

1680. *January 7.* M'LELLAN *against* MUSCHET.

Inhibition was found not to reach a renunciation of an infeftment of annual-rent or discharges granted by the person inhibited upon true payment. See act of sederunt, 19th February 1680, 'anent the taking renunciations from persons inhibited.'

*Fol. Dic. v. 1. p. 475. Stair.*

\* \* \* This case is No. 10. p. 571, *voce* ANNUALRENT, INFESTMENT OF.

1680. *December 16.*

HAY *against* The LADY BALLEGERNO and the LAIRD of BATHAIKE.

No 111.

Inhibition was found not to exclude or burden a recognition.

JOHN HAY of Muirie as donatar to the recognition of the lands of Powrie, pursues declarator thereon. Comparance is made for the Lady Ballegerno, as heir to her father, who had a wadset upon a part of the lands, and who had used inhibition; and likewise Bathaïke compeared, having also inhibited and raised reduction of the ward-vassal's author's right, and of his own right and the deeds of recognition, as falling in consequence. It was *alleged* for the defender, *imo*, That recognition is rigorous and odious, and though it was far extended when ward-holdings were gratuitous, and granted for fidelity and service to the superior, yet now being commonly onerous, and importing no such personal service, recognition ought to be favourably and moderately sustained; and though it doth import, that the ward-vassal's atrocious delinquence against the nature of the feu, should make his right recognosce and return to the superior, without any burden not consented to by the superior, or introduced by law, yet the effect of recognition is excluded in many cases; as, *imo*, An alienation upon death-bed was found by the Lords not to infer recognition in the case of Cap-