

1694. *January 24.* KEITH *against* CATHCART of Carbiston.

No. 44.

An adjudication with a charge against the superior found a sufficient title in an improbation, because any having interest may propone false and feigned; but it was found not a sufficient title to insist in a reduction of real rights perfected by infertment, no more than it would be to pursue a removing.

Fol. Dic. v. 2. p. 471. Fount.

* * * This case is No. 59. p. 13285. *voce* QUOD AB INITIO VITIOSUM.

1696. *December 10.* M'KENZIE *against* MR. ADAM CAMPBELL.

No. 45.

George M'Kenzie of Rosehaugh pursues Mr. Adam Campbell of Gargunnoch, and other creditors of Robert Cunningham of Achinharvie, being a reduction on the act of Parliament 1621. The objection was against the pursuer's title, that being only a personal creditor he had no interest to call for reducing of real rights and infertments, seeing nothing can quarrel or take away a real right, but what is homogeneous, and of the same nature with it. Answered, The act of Parliament 1621, allows any creditor to reduce upon fraud; and November, 1669, the Creditors of Balmerino, (though only personal) were permitted to pursue a reduction *ex capite lecti* against the Lady Cowper, of her disposition, though it was completed and made real by infertment, No. 25. p. 3203. See it also in Sir G. M'Kenzie's observations on the said act. The Lords sustained the title, and remembered that they had done so in the reduction *ex capite fraudis* pursued by the personal creditors of Muirhouse against the real, though in other competitions none but real creditors are allowed to quarrel and reduce real rights.

A personal creditor has a sufficient title to reduce on the act of Parliament 1621.

Fountainhall, v. 1. p. 741.

1699. *July 11.* LEARMONTH *against* GORDON.

No. 46.

An objection being made against the title of a pursuer of a process of sale, That it was only an infertment of annual-rent, which is but a servitude, whereas none can pursue but such a creditor as has a right of property; the Lords repelled the objection, though the infertment was not over the whole, but of a part of the lands.

Fol. Dic. v. 2. p. 473. Fount.

* * * This case is No. 6. p. 3096. *voce* CONSUETUDE.