

- No 2. not upon the property thereof, and so the Abbot and convent could not get hurt nor yet profit of this cause, however it go; and so the witnesses were admitted, albeit the other party's procurator, Mr Hew Rig, alleged, that they should have been repelled, quia erant tenentes dicti Abbötis, et agebatur super partes, et pertinen. predictarum terrarum ad eundem, ut prædictum est speciatiim.

Sinclair, MS. p. 15, 20, 24.

1542.

LIVINGSTON *against* WOOD.

- No 3. THE Laird of Livingston intented action of reduction of a decret given against his father, at the instance of David Wood, comptroller, which decret was given by virtue of an obligation produced by the said David, which obligation the pursuer in this reduction craved to be produced, that he might improve the same. THE LORDS would not sustain the reason of reduction, quia procurator actoris in prima instantia non excipiendo de falsitate, imo proponendo aliam exceptionem, tacite visus est illam approbare: And as the pursuer's father, if he were alive, would not be heard to improve the same which he has once approved, as said is, no more could his son and heir, at least his successor who is in his place and right. Et de jure, exceptio falsitatis post sententiam non potest opponi.

Spottiswood, (REDUCTION.) p. 269.

1542. June 20.

Lord OGILVIE *against* JOHN CAMPBELL.

- No 4. ALBEIT ane man intent summondis for reducioun of ony decrete or sentence gevin and pronouncit aganis him, the dependance of the said summondis, or cause of reducioun, sould not stop or delay the executioun of the decrete. *Fol. Dic. v. 2. p. 326. Balfour, (OF REDUCTION OF SENTENCE.) No 4. p. 406.*

. Sinclair reports this case :

IN the cause of the Ld Ogilvie against Sir John Campbell of Lundie; there were certain lands of the said Lord's as pledge and surety for the Laird of Dunoon comprised to a woman called M; and these lands being apprised to her, she caused assign to the said Sir John for money, who, by reason thereof, obtained infeftment thereof by the Earl of Crawford, superior of the same. Thereafter the said Lord got a decret of the Lords of Council, upon which these lands were apprised, reduced, the said Sir John not called thereto; and

thereafter the said Lord called the woman's heirs, and that for his interest, to hear that apprising be reduced, because the decret upon which it passed was reduced now. The said Sir John shewed how he had these lands titulo oneroso et petit diem ad vocandum warrantum suum. THE LORDS, by interlocutor, decerned that he ought not to have now any warrant, because there could nobody warrant such a process, and there was nothing asked here from him that he had *titulo oneroso*, for there was no question of the lands nor his infestment of these lands reducing, but alienarly of the process of apprising; *adly*, He asked the process of reduction of apprising to be deferred until his summons be also tabled, or the reduction of the decret given for the Lord Ogilvie, reducing the decret upon which the said apprising was passed, were first called; and that because the said decret reductive concerned the said Sir John, and was given he not being called thereto; or at the least had, *in delicto*, he then being in the King's special service, so that he might not compare then for his interest, and so *legitima absentia*. *Alleged*, That his summons depending, as said is, for restoring of him against the said decret reductive, and also for retreating of the same, ought to be first decided before the said decret reductive were executed, and by virtue thereof any process led for reduction of the apprising foresaid; and to the effect foresaid produced our Seal and Letters under his signet. THE LORDS, by interlocutor decerned, that the allegiance foresaid was not relevant, because of the practick, *petitio restitutionis in integrum vel actio pro reductione alicujus decreti intentata, non impedit executionem ejusdem*; and also because our Sovereign Lord's privy letters ought not to be obeyed for stopping and hindering of justice, conform to the act made thereupon; and also, in the same case, the LORDS found that neither the act of Parliament, speaking of reduction of inordinate process to be called within three years, nor yet the act of appraised lands to be redeemed within seven years, could have place in this case, and stop the reduction of this apprising; *quia acta loquuntur in diversis casibus ut ex eorum inspectione licet cognoscere.*

Sinclair, MS. p. 34.

1548. February 17.

FLEMING against KER.

THE Laird of Fleming's son called Dickson of Ormiston to hear the five pound land of Glenhome, and certain other lands, decerned in non-entry, and to pertain to him the mails and duties thereof as donatar thereto, by our Sovereign Lord that last deceased; - Janet Ker, the relict of Thomas Dickson, compeared for her interest, and said the non-entry of these lands pertained to her, by reason of the gift thereof made to her by the said Sovereign Lord, upon the second year before the said Lord's son's gift, and that by virtue thereof she bruiked the same diverse years. It was *replied*, That her gift might not seclude the

VOL. XXXI.

74 Q

I

No 5.

A gift of non-entry was made, and thereafter an heir was served and returned. The service and retour being reduced, the gift revived.