

No 30. observed, but the matter was thereafter ordained to lie over till further advisement. See No 17.

Durie, p. 535.

No 31.

1631. January 20. GORDON against EARL of GALLOWAY.

A DECREET given *in foro contradictorio* cannot be reduced *ex instrumentis noviter repertis*, but in some cases.

Auchinleck, MS. p. 188.

* * Durie's report is No 262. p. 12136., *voce* PROCESS.

1631. February 4. LAIRD of GLENGARRY against LAIRD of FOWLIS.

No 32.
Whether a transumpt of a charter of confirmation, without a sasine, sufficiently instructed a title.

In a reduction and improbation pursued against the Laird of Fowlis, at the instance of the Laird of Glengarry, as heir served and retoured to his great-grandfather, Celestine of the Isles, son to John Lord of the Isles, for reduction and improbation of all rights made to the defenders or their authors, by Alexander son to Celestine, or by Donald his son, or by Margaret or Janet his sisters, &c., the pursuer for instructing his title produced a transumpt of a charter of confirmation granted by the King of a base infeftment given by John Lord of the Isles to Celestine his son. The confirmed charter was dated 1463, the confirmation was 1466, and the transumpt was given before the official of Murray. *Alleged* by the defender, No process for reduction of his infeftments, because the pursuer had no real right standing in his person by sasine, which he had never gotten, neither by virtue of the first infeftment given to Celestine, nor yet since his time; but he only shewed a naked transumpt of a confirmation of a base infeftment. *Replied*, The defender could not quarrel his right for want of a sasine; because, *1mo*, *In facto tam antiquo* sasine is not necessary; *2do*, The defender's right proceeded from the same author, and so he could not quarrel that defect; for the medium whereby the defender's infeftments were sought to be reduced was, that the descendants from Celestine, who had disposed the lands libelled to the defenders as having right thereunto by disposition or otherwise from Celestine, were never infeft therein, neither as heirs to Celestine, nor yet by disposition from him. THE LORDS repelled the allegiance *hoc loco* against the reduction, but reserved it to be disputed *in causa* after the production. Next *alleged*, No production of any writs proceeding from the King, because the pursuer libelled no right he had of the King. THE LORDS found, he ought not to produce any original rights made by the King; but if the rights granted by the King to the defenders

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proceeded upon the resignation of any of Celestine's descendants libelled, &c. they should produce them.

No 32.

Spottiswood, (REGALITY.) p. 271.

. Durie's report is No 42. p. 6636., *voce* IMPROBATION.

1663. *January 16.* ELLIOT *against* RIDDEL.

ARCHIBALD ELLIOT of Medlestaid, wadset his lands to John Riddel of Muiseily, for a sum of money under reversion, and with a clause irritant, bearing, That if precisely at the term the money should not be paid, in that case, the reversion to be null; whereupon a declarator is obtained for not payment, before the English Judges. There is a reduction pursued of this decret, upon this ground, That he was not compearing in this decret; and though in the minutes of process he was marked compearing by his procurator, to whom a day was assigned for purging the failzie, yet at that time he could not compear, because he was lying bedfast; and it were against reason, that the defender by his calamity, should be under such disadvantage, the lands being near double worth the money.

No 33.
Reduction of a decree of the English judge, who had declared an irritancy while the party was prevented by sickness from appearing personally.

THE LORDS found the reason of reduction relevant, in respect of the condition of the pursuer for the time, by sickness, and of the exorbitant advantage the defender would have, if the decret should stand.

Gilmour, No 64. p. 48.

1665. *December 15.* GRANTS and ROW *against* VISCOUNT of STORMONT.

DAVID Viscount of Stormont having obtained a decret of reduction against Grants, of their right of certain lands, for not production. Grants and ——— Row, did reduce the said decret against ———, now Viscount of Stormont, upon production of the rights called for in the first decret; and in this reduction, the LORDS did suffer and admit the said Viscount to insist in the said first reduction, he producing the said David Viscount of Stormont his right and instructing that he represents him; though the said first process was not transferred in the person of the said Viscount *active*, and against the pursuers of this reduction *passive*; and the summons of reduction, whereupon the first decret proceeded, was not produced; which the LORDS allowed to be supplied by production of the decret, and a paper containing such reasons of reduction, as Stormont thought fit to give in; and that in respect it was the fault of the defenders in the reduction, that the writs were not then produced; and they and those having right from them be-

No 34.
Effect of production for non-production.