

and being thereupon infest, obtains decret of removing before the sheriff of Perth, against one Campbell, he not compearing; who suspends, that he was infest before the comprising; and the other opponing his decret standing, and, notwithstanding thereof, answering also, that he would be content to receive that reason, and the verification thereof in this same place, to be tried *hoc ordine*, if his reply thereto shall be also received in this place, *viz.* that the common debtor was inhibited by the compriser long before any right made to this suspender; and which, he alleged, was as great reason should be received *hoc ordine*, against that infestment, as the said infestment might be received against the decret standing against this same party, and against this comprising also, and infestment standing, obtained by him upon his great charges, being a poor man, and for a small sum; which required summary process; and if not, that they both alike should be either put to reduce, or else both should be summarily discussed. Notwithstanding whereof, the reason of suspension was instantly received, the infestment being instantly produced to verify the same; albeit the suspender's possession was not instantly verified; and the compriser was put to reduce upon his inhibition.

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1635. *March 4.* LADY BORTHWICK *against* The LAIRD of GALLASHEILLS.

LADY Borthwick being infest in the lands of Coblehaugh and others, and pursuing the Laird of Gallasheills for the mails and duties of certain of these lands; who defending himself with a right of a tack of the same, set to him by Walter Cairncross, son to umquhile ——— Cairncross, which setter foresaid was heir to his umquhile good-sir, who was heritably infest in these lands by the umquhile Lord Borthwick, heritor of the same: And the Lady replying, that he could not clothe himself with any right flowing from Walter Cairncross, because sentence of reduction was obtained at Gallasheills's own instance and the E. of Lothian's instance, against the son and apparent heir of the said Walter, and also against the Lord Borthwick, husband to this pursuer, reducing the Lord Borthwick's heritable infestment of the lands, and reducing, *per consequentiam*, expressly also the heritable right of the said lands, made by the Lord Borthwick to the said Walter Cairncross; after the which sentence reductive, the said excipient was decerned by a decret-arbitral betwixt him and the Earl of Lothian, and this pursuer's husband, to quit all the rights which he had to the lands, in favour of her said husband, that he might be infest validly in the same lands of the lordship of Borthwick; and that this pursuer, spouse to the said lord, might be infest in conjunct-fee of the lands decerned thereby; likeas, accordingly, she is infest in thir lands libelled, acclaimed as a part of the lands provided to her in life-rent; in respect of which decret of reduction, obtained at his own instance, and deed done by him depending thereon, he could never thereafter lawfully acquire any new right of the lands, the rights whereof were reduced by that sentence reductive, procured by himself, and the deeds done thereupon by himself depending thereon: And the defender answering, that he comes not against any right which ever he had devolved in the person of the Lord Borthwick, after that sentence; but that it was lawful to Cairncross, against whom that sen-

tence was recovered, or his heir, to reduce that decret redutive, upon good reasons, relevant in law; so it was lawful to this excipient to acquire that right from them, wherein he cannot be prejudged, if the right be in law valid to maintain his possession thereby, notwithstanding that he had obtained the sentence reducing that right; and which sentence redutive he now desired to be reduced, to the effect the heritable right, made to the said Walter Cairncross, might remain and be tried to be good and lawful, and not to fall for any reason contained in that sentence, whereby it was reduced: And he alleged, that it were great injustice, that, because the right was become in his person, therefore that it should not have the course and effect of a good and sufficient right,—it being so in itself,—but that it should fall, because he had acquired it: likeas he further alleged, that he was but tacksman to the said Walter Cairncross, and so tenant only to him, and that the heritable right subsisted in the said Walter's own person; for which Walter, the advocates and procurators compearing in this process declared they compeared expressly, and proponed the exception for him, and insisted in the said reduction of the decret redutive at his instance, the same being specially raised in his name: And the pursuer answering, that, albeit Walter Cairncross be reducer, yet his name cannot be obruded against the pursuer, because he was denuded of all right competent to him, in favours of Gallasheills, who can never be heard to evert his own deed, as said is. The Lords repelled the foresaid exception, either proponed for Gallasheills or for Cairncross, in respect of the reply, viz. That Cairncross was absolutely denuded of all his right in favours of Gallasheills; and found that Gallasheills could not vailably nor dutifully acquire from him his right, thereby to prejudge the effect of the sentence, reducing the same right obtained at his own instance. Which sentence he was found he could not quarrel, himself, neither directly nor indirectly; nor upon any ground of right acquired by him from any person, which might lawfully have impugned the same; albeit purchased by him after that sentence, and not being in his person at the time of the obtaining thereof, nor yet being acquired by him at any time, when he contracted thereafter with the Lord Borthwick, no more than if the said rights had been then standing full in his person, and as if the right had been acquired by him the time of the sentence, and when he contracted thereafter with the Lord Borthwick: *Quo casu*, he could not have come against the decret and deeds thereafter done: Even sicklike the Lords found he could not be heard to come against the same, upon any purchase of any other man's right acquired thereafter; for, albeit the party principal, to whom the right belonged, might have quarrelled that decret which was given against him, yet it was not found alike competent to that party who had obtained the sentence, and had transacted therefore.

*Act.* Nicolson and Mowat. *All.* Advocatus, Stuart, and Cunninghame. Hay, Clerk. *Vid.* 5th March 1629, La. Borthwick; 11th December 1634, L. Lenoris.

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1635. March 18. LADY BORTHWICK *against* The LAIRD of GALLASHEILLS.

THE Lady Borthwick pursuing Gallasheills for reduction of a bond of 10,000