

## No 77.

A pursuer of reduction *ex capite inhibitionis* must produce the grounds of debt upon which he proceeds, altho' the inhibitor have also comprised upon the same debts before the infestment to be reduced.

1639. March 6. SIR JAMES STUART *against* HAY GORDON of Kingstair.

IN a reduction of an infestment granted by Sorbie to Kingstair, of the mill of ———, upon a reason, that the pursuer had lawfully comprised the same before the infestment; and also, that he had inhibited, before the said infestment, Sorbie, to sell and dispoise;—the defender *alleging*, That the warrant of the inhibition ought to be produced before he could be compelled to dispute upon this reason of inhibition, that he might see the ground thereof;—and the other *answering*, That he joined with his inhibition, the reason of his anterior comprising upon the same bonds, which are the ground of his inhibition; and the comprising being produced, which is a sentence, he needs produce no more: THE LORDS found, That seeing the party insisted not upon the reason alone, which was founded upon the comprising, but joined therewith the reason upon the inhibition, as a conjunct reason, that he ought to produce the warrants whereupon the inhibition was raised, that the defender might object what he may lawfully say against the same; seeing the inhibition, and not the comprising, was the main and substantial part of the reason of reduction which appeared to add relevancy thereto.

Act. Stuart & Nicolson.

Alt. Gilmore.

Clerk, Scot.

Fol. Dic. v. 2. p. 180. Durie, p. 879.

## No 78.

Extract of a registered bond found not to instruct the debt against the heir of a party whom the extract bore to have subscribed the bond, but only against the consenters to the registration.

1662. February 7. ACHESON *against* EARL of ERROL.

ACHESON pursues the Earl of Errol, as representing his father, to pay a debt wherein his father was cautioner for the Earl of Mar; and for instructing thereof, produced the extract of a bond, registered by consent in the books of of session. The defender *alleged* no process against him; because the bond was not registered by any procurator for his father, because he was dead before the registration, and so cannot prove against him, neither being a principal writ subscribed by him, nor being a decret of registrasion by consent of his procurator, nor upon citation. The pursuer *alleged*, that it was an authentic evident, and bore expressly *sic subscribitur*, Errol; and seeing by law and custom, the pursuer was necessitated to leave the principal at the register, when he registered the same, and that the registers are now lost without his fault.

THE LORDS refused to sustain the extract against the Earl of Errol, but yet would not put the party to an action of proving the tenor, but would receive adminicles to instruct that the Earl was cautioner; and therefore, *ex officio*, ordained the other subscribers of the bond, or any other person that could be adduced, for instructing the truth to be required *ex officio*.

Stair, v. 1. p. 94.