

No 38. course of his Majesty's Advocate. It was *replied*, that *rei persecutoria* he had interest to pursue for what was *indebite* paid.

THE LORDS found, that the process could not be sustained without consent of his Majesty's Advocate; the act of parliament being express, that the creditor cannot repeat the exorescence above the annualrent, unless he concur with the Advocate to reduce; which appeareth to be provided of purpose to oblige the creditor to inform and concur with the Advocate for reducing so unlawful pactions.

Dirleton, No 56. p. 23.

1667. June 12. DALRYMPLE against _____

No 39.

A REDUCTION of a testament being pursued, *ex eo capite*, that the defunct was *fatuus & incompos mentis*, and the relevancy being questioned, because no act or circumstance or qualification was libelled, inferring the defunct to be in that condition,

THE LORDS, ordained the pursuer to condescend.

Dirleton, No 76. p. 31.

Alt. *Wallace.*

Hog. _____

No 40.

1667. December 11. RODGER HOG against THE COUNTESS of HOME.

MR RODGER HOG insisting in his reduction, mentioned yesterday, No 109. p. 7039. *voce* INHIBITION, upon his inhibition the Countess of Home alleged, that she had right from apprisers, who would exclude the pursuer's right and inhibition, and would defend herself thereupon, and not suffer her right to be reduced *ex capite inhibitionis*, and might thereby exclude the pursuer from any interest. It was answered, that the reduction being only upon an inhibition, there are no rights called for, but rights posterior thereto, and it cannot prejudice any prior right, which the pursuer is content shall be reserved.

Yet the Lords admitted the defender to defend, upon any prior right, that might exclude the pursuers right,

Fol. Dic. v. 2. p. 327. Stair, v. 1. p. 492.

1672. June 21.

CREDITORS of the LAIRD of CRAIG against THE HERITORS of the Lands.

No 41.
In a reduction, calling for rights made to the

IN a reduction at the instance of some Creditors of the Laird of Craig, for reduction of a disposition granted by the Laird of Craig and Earl of Dundee.