

but, whether it should default yearly, or only *in cumulo* from the date of using the order, the Lords ordained the parties to debate, *a quo tempore* it should commence, and if it was a proper or improper wadset ; seeing, by the ignorance of the notary, who is the writer, it seems to participate something of the nature of both.

*Vol. II. Page 206.*

1704. *January 4.* ALEXANDER PIPER of NEWGRANGE *against* SCOTT of HEDDERWICK.

THE said Alexander having, at the roup, bought the lands of Newgrange, formerly belonging to Sir Francis Ogilvie, he raises a reduction and improbation against sundry of the creditors, and particularly against Hedderwick ; and, seeking out certification against them, for not production, the creditors apply to the Lords by a bill, complaining, That Mr Piper had taken a very unusual method to pay them, in seeking to annul their rights ; and that a purchaser at the sale of bankrupts' lands could not pursue reductions and improbations, but only a multiplepoinding, in which he may call the creditors ; and, after they have debated their preferences, and are ranked conform to their respective interests and shares in the price, he may either consign or pay accordingly ;—and that they had produced their adjudications and registrate bonds ; but he was insisting against them for not producing the principals, and the grounds and warrants of their decreets, such as the summons and executions, &c. in which he had no interest ; and the production they had made was sufficient to exclude him.

ANSWERED,—He was necessitated to follow this course ; for Sir Francis, the former heritor, kept up the writs and charter-chest from him ; and thir creditors were not in the decret of ranking ; and he had paid out already a great part of the price, and ought to be secured in his purchase.

The Lords thought this remedy of pursuing the creditors by a reduction somewhat extraordinary, he having granted bond and caution to pay them according to their preferences ; and, to take the advantage of a certification, would be ill payment. But, remembering that William Hay of Drummelzier, who bought the barony of Dunse at the roup of Sir James Cockburn's estate, had pursued such an action of reduction and improbation, they desired to be informed, ere they proceeded farther, whether the act of roup was in his title in that process, or the real creditors' rights which he had transacted and bought in ; for, though such a pursuit, *qua* purchaser at the roup, may be unequal, yet, if the process be as assignee constituted by the creditors to their debts, that may be a sufficient title *ad fundandam litem*. And, how far a decret of sale may be the title, the Lords resolved to consider the same after a hearing.

*Vol. II. Page 208.*

1704. *January 27.* EUPHAME CUNINGHAM *against* ALEXANDER CUNINGHAM of CULLELLAN.

By contract of marriage, in 1658, betwixt Mr William Cuningham, Minister