

No. 52. property. *2do*, He hath undoubted title to reduce any right flowing from James Stuart, whom he represents; and this renunciation doth flow mediately, though not immediately, from James Stuart, the pursuer's author. *3tio*, An apparent heir hath title to reduce all deeds that stop his service to his predecessor; and this renunciation is the only thing could have stopped his service before he was served, or hinder his service to be effectual, now that it is expedite. *4to*, Suppose Hisleside could not *via actionis* pursue directly a reduction of this renunciation, he hath a title to object any nullity by way of reply against it, now when obtruded by the defender to elide the pursuer's action, *qui excipiendo fit reus*.

Duplied for the defender: Albeit taking away the discharge would be effectual to revive the pursuer's right, yet that consequential benefit is no title to reduce the deed of another, upon the special reason of fraud and circumvention, without representing the granter; for none can quarrel a deed upon the head of fraud or lesion, but he who subjects himself to perform whatever the granter would have been liable to in the event of its being annulled, which the pursuer is not, unless he represent Grizel Stuart; and an absolvitor in the defender's favours in this process would not secure him from being unquieted by the like action at the instance of other heirs. Apparent heirs are indeed allowed to reduce deeds on death-bed, for removing any stops to their service, as being null in themselves, and made *tempore inhabili*; but no such objection lies against the discharge in question, which Grizel Stuart had no doubt power to grant, and no person can quarrel it upon any special reason, as in this case, but an heir served. And even where reduction is intended for removing a deed that hinders the reducer to establish a right to the subject, the Lords never allow the reduction to proceed, till the pursuer hath made up in his person all the right to his predecessor that he could. *V. G.* They oblige apparent heirs to serve in general, in order to reduce infeftments granted by their predecessors.

The Lords found, That Hisleside could not found upon the reason of fraud and circumvention, unless he represent Grizel Stuart, the person alleged to be circumvented; and therefore found, That he had no title in his person to quarrel the discharge and renunciation by Grizel Stuart, he not being served heir to her.

Forbes, p. 706.

No. 53.

The Lords found adjudication without infeftment of a bankrupt estate, for bygone feu-duties resting to the superior, a sufficient title in a process of sale at his instance.

1714. January 27. DUKE of GORDON *against* M^rPERSON of Clunie.

The Lords sustained an adjudication of Clunie's estate, without infeftment, obtained by the Duke of Gordon, superior thereof, for bygone feu-duties resting to his Grace, as a sufficient title to pursue a sale of the bankrupt debtor's estate, albeit the act 17. Parliament 3. Cha. II. requires the pursuer of such a sale to be a creditor having a real right, in respect the vassal's infeftment is the superior's infeftment as to feu-duties.

Forbes MS. p. 18.