by the present reduction, find that the defender is bound to satisfy the production as to all the others of said deeds not satisfied; reserving to the defender, at discussing the reasons of reduction, to be heard on his objections to the pursuer's title, and on all his other defences whatever, as accords; and remit to the Ordinary to proceed accordingly."

N.B.—In a reduction, all defences against a pursuer's title ought to be proponed before taking a day, and argued in that state of the process, otherwise they are held to be past from, or overruled, unless they are expressly reserved. —*Reg.* 1672, § 25.

1776. *June* 27. ALEXANDER IRVINE of DRUM *against* The EARL of ABERDEEN, &c.

ALEXANDER Irvine of Drum, as heir of entail of that estate, brought an action of reduction, improbation, and declarator, for setting aside a variety of incumbrances affecting it, and, in particular, a decreet of ranking and sale of the estate as bankrupt. His reasons of reduction proceeded on the entail, and on fraud practised by the purchasers at the judicial sale, who were also the conductors of the ranking, in rearing up fictitious debts for making the estate bankrupt, and in bringing about a sale at an under value. The defender attempted to exclude, by producing the decreet of sale itself brought under challenge, which they contended was good against all mortals. They produced also a ratification of the defender's rights, by John Irvine of Drum, *anno* 1737, with a decreet of absolvitor, at their instance, against Alexander Irvine of Drum, who had pursued them to account, and for implement of certain articles relative to the sale; and it was contended, that, as the present pursuer represented both these lairds of Drum by a universal passive title, he was barred from challenging the decreet of sale. It was answered,—That to pretend to exclude, by producing the decreet of sale under challenge, was reasoning in a circle: and as to the other two deeds, these could never amount to an exclusive title, the last being only relative to certain articles, not to the sale in general; and as to the first, no ratification by a predecessor could prejudge his heir who claimed not as heir of line but as heir of tailyie. The Lords pronounced no judgment at first on the general point; but, 19th February 1767, before answer, they appointed the pursuer to give in a particular condescendence of the articles of fraud and other objections to the decreet of sale and of the other special reasons of reduction. They enlarged this, 5th March 1767, and extended it to the other deeds under reduction, *viz.* debts and incumbrances affecting the estate conveyed to the defenders. Condescendences were given in, and, 27th January 1769, the Lords found, "That the defenders were not bound in *hoc statu* to produce the writs and deeds called for."

But, this interlocutor being reclaimed against, the Lords adhered, "without prejudice to the pursuer to call the defenders to account for any particular debt against which he alleges fraud, reserving all defences as accords."

On an appeal, the interlocutors were reversed, and the defenders were obliged to produce the writs and deeds specially called for. They did so; the cause proceeded, and, 27th June 1776, the defenders were assoilyied.

1777. *February* 19. JEAN ROBERTSON *against* WILLIAM FRASER.

FACILITY and lesion by themselves have not been held as sufficient grounds of reduction by the law of Scotland: fraud has been reckoned a necessary ingredient; at the same time, where the other two are great, a lesser degree of fraud will be sufficient, and will, in certain cases, be presumed: great facility and great lesion will presume fraud. The Lords, however, in some late cases, seem to hold that facility and lesion, even without fraud, are sufficient.

The case of *Dallas* against *Dallas*, and of *Macdonald of Shian* against *MacPherson of Killiehuntly*, point this way.

The above reflections occurred in a case this day, under consideration of the Lords, *viz*. a reduction at the instance of Jean Robertson *against* William Fraser, for reducing a transaction between them with regard to Jean's share of a moveable succession to an uncle.

She appeared to be a weak woman, though not extraordinarily so; and the inequality of the bargain seemed, as it turned out, to be considerable; at the same time it was, in some respects, a bargain of chance. It had been transacted openly, not *remotis arbitris*, and was homologated and acquiesced in for years by Jean Robertson. A fraud was not alleged further than appeared from the nature of the transaction, which the Lord Monboddo, Ordinary, not thinking sufficient, refused to allow to the pursuer a proof of the reasons of reduction: But the Lords were of a different opinion, and allowed the proof before answer.

Lord Gardenston gave it as his opinion, that facility and lesion were, *per se*, grounds of reduction sufficient. The other Lords kept in general, and, on a division, allowed the proof.

REGISTER.

1775. *December* 10. RALSTON of RALSTON, &c. Petitioners.

A BOND for L.1300 had been recorded in the Sheriff of Renfrew his register. The debtor having gone to Granada, it was found that an extract of the bond from the Sheriff's Register was, in their courts, held to be a voucher of the debt. There were several persons interested in the bond; some of them for the annualrent,—some for the fee,—some of the last were minors; and the