

1627. *February 15.* PATON *against* CADDEL.

IN a reduction betwixt Paton *against* Caddel, the case whereof was, that Paton, having comprised the liferent-right which was in the person of one Agnes Hume, and having recovered decret for payment of the duty of the annual-rent whereof she had that liferent; thereafter William Caddel, son to the said Agnes Hume, and heritor of the said annual-rent, whereof his said mother was alleged liferentrix, obtained this liferent-right reduced for nonproduction, the liferentrix being called, and also Paton being called, who had comprised the same: This decret reductive being desired to be reduced by the said Paton the compriser, upon a reason bearing, that the son could never have reduced the liferent-right made to his mother, because he was heir to his father, who, by contract, was obliged to give infestment to his said mother, of as much land or annual-rent as the annual-rent contracted did extend to; so that he could never desire her liferent-right foresaid to be reduced, upon pretext of minority and lesion, as if he had been hurt by making of that liferent to his mother, he being minor when he made the same, (for this was the reason of his reduction;) seeing, in effect, he being obliged of the law, by this preceding obligation of his father's, he could not seek reduction, and so it could not be collusion betwixt him and his mother, to take decret for nonproduction, to prejudice this compriser thereby, who could not, *per rerum naturam*, have the writs which were among themselves, and which they would not produce. This reason was found relevant in favours of this compriser: albeit the defender alleged, that his decret reductive could never be reduced, except the writs called for in his reduction had been first produced; for the production ought to be satisfied, before he could be compelled to dispute upon his reason; and if they were reduced for nonproduction, yet that was this party's own fault, who might have appeared, and used incident against the liferenter, or others, havers of the writs called for; which, not being done, behoved to be her own fault, and militated against her. Which was repelled, and no necessity found to her to satisfy the production.

*Act.* Foulis. *Alt.* ———. Scot, Clerk.

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1627. *Feb. 16.* ADAM BOTHWELL *against* JOHN OLIPHANT.

IN an action, at the instance of Adam Bothwell *against* Mr John Oliphant, for the subscribing of a contract, and registration thereof, whereby the lands of Burghtoun, being sold by Alexander Mowat to the said Mr John, and Adam Bothwell being a contractor therein, for all right he had to these lands; in a clause thereof, Margaret Crawford, who was tercer of her terce of the said lands, is set down to have disponded her terce to the said Mr John, with consent of the said Adam, who hath not subscribed the contract, but only Adam who is nominate in that clause to be a consenter with her; and therefore the said action being for subscribing that part of the contract whereby Mr John is obliged to pay the yearly duty specified in the contract for her terce, the said Mr John