

signation, made the redemption to be of no value, as likewise give the silver had been tane up again. It was *answered*, That albeit the said tack had been tane up again, now the same being presented before the Lords, *licet non idem fuit numero aut in judicio, tamen idem specie*; and so the party being no manner of way prejudged be that deed, the redemption ought to be found lawful. THE LORDS fand be interloquitor, that the production of the tack before the Lords albeit it was not *idem numero* was sufficient. The like being practised of before anent the procuratorie betwixt Mr Hepburn and the L. of Balbut. See REDEMPTION.

In the said action of redemption intended be the Earl of Crawford against Ogilvie, the consignation of the soume and tack being quarrelled, the Earl of Crawford produced ane instrument, subscribed be two notars, that he offered the silver and the tacks conform to the reversion to the party, providing he would renounce, and grant the lands to be lawfully redeemed. It was *alleged* be Ogilvie on the other part, that he offered him to prove, be authentic instruments under the subscription of the same notars, that he offered to take the silver and to renounce all right and title that he had to the lands, conform to the reversion in all points, *et sic fuerat instrumenta in vicem derogatoria*. It was found be the LORDS, that they wald not admit any probation be another instrument that was derogatory to the first, but gif they wald improve, they wald hear the party. *Vide Bald. in l. Scripturæ de fide instrumentorum, ubi tractatur de constitu: scripturarum.*

Fol. Dic. v. 1. p. 173. Colvil, MS. p. 253.

1628. July 25. STIRLING against PANTER and OGILVIE.

IN a reduction betwixt Stirling and Panter and Ogilvie, for reducing of an infestment, in respect of a preceding inhibition; the defender *alleging* the inhibition to be null, because the dwelling-place of the party prohibited to anailzie, whereat the inhibition was execute, was within a regality, where, conform to the 268th act 15 Parl. Ja. VI. the same should be execute at the head burgh of the regality; likeas, the same should be registrate in the registers of that regality, and this inhibition is neither execute, nor registrate there, but only at the market-cross of the head burgh of the sheriffdom, and registrate in the Sheriff-clerk's books; this allegiance was repelled, and the nullity fore-said was found, ought not to be received, by way of exception, but was reserved to the party, to be pursued by way of ordinary action of reduction, *prout de jure*. And thereafter, the defender *alleging* improbation of the inhibition, which being found relevant, the pursuer *alleged*, that seeing improbation was the last exception, which excluded the proponing of any other defence, therefore he *alleged*, that the defender could not thereafter be heard, to return to pursue any action of nullity against the writ. THE LORDS found, That notwithstanding the improbation, he might thereafter pursue the nullity, seeing

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therein inserted, and that by another instrument under the same notary's hand, the Lords refused to admit the same, and only reserved action of improbation.

No 23.
An inhibition being executed against a person living within a regality, not at the head burgh thereof, nor registered there, but at the head burgh of the shire, the Lords refused to receive the allegiance by way of exception; but reduction *prout de jure* was reserved to the party.

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the same nullity being in this same process proponed by way of exception, and found not to be admissable in this place by way of exception, but reserved by way of action, the party ought not to be prejudged, to insist thereon in an ordinary pursuit; albeit the pursuer *contended*, that the said improbation should either also be reserved by way of action, and not proponed in this place; or else, if the defender would propone the same here by way of exception, that thereby he did prejudice himself, and could not thereafter return to pursue upon the nullity thereof; which was repelled. This decision was stopped, and the cause ordained to be heard over again, and the same being reasoned, July ult. 1628, the nullity foresaid was received by way of exception, and admitted to the excipient's probation.

The like done in a declarator, Mr Alexander Burnet *contra* Lady Bonitoun, of her liferent escheat, March 10. 1637, where she first proponing a nullity againg the horning, viz. that she dwelt within another sheriffdom, than at the head burgh, whereof by the horning she was denounced, which was repelled *hoc loco*, and reserved to her to reduce thereupon; and, she thereafter proponing improbation, the LORDS found this allegiance of improbation should not prejudice her, to pursue reduction, upon the ground of nullity, which was proponed by her, and was found not admissable, in this place, by way of exception against his pursuit. *See PROCESS—EXECUTION.*

Act. *Advocatus Hope & Nicolson.*Alt. *Stuart.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 172. Durie, p. 393.*

No 24.

An exception against a woman's bond, that it was granted in her widowhood, but after proclamation of her banns with a second husband, was found relevant, and received summarily, without necessity of reduction.

1633. *January 29.*SCOT *against* BROWN.

IN a pursuit against one Scot and her Husband for his interest, for payment of L. 100 contained in a bond, given by her in her widowhood; the husband *allegiug* the bond to be null, because it was given by this defender, now his wife, (albeit then a widow) yet it was granted after her banns of marriage with this defender the second husband were proclaimed publicly in the parish church, and marriage was compleated after the said proclamations were ended immediately, so that she could do no deed after that proclamation which might oblige her husband. This allegiance was found relevant, and received summarily against the bond, without necessity of reduction. *See HUSBAND and WIFE.*

Act. ———.

Alt. *Burnet.**Fol. Dic. v. 1. p. 174. Durie, p. 665.*

No 25.

A preferable creditor, though cited, neglecting to

1670. *February 1.* JAMES WATSON *against* AGNES SIMSON.

AGNES SIMSON being infest by umquhile Alexander Stewart, her husband, in liferent in an annualrent of L. 40 yearly out of the lands of Lamellethem, she,