

of reduction and mails and duties. *3tio*, Elshiesheills hath used inhibition before Lockerby's new right, which though it cannot be made use of by exception, yet may be by reply, or in competition.

THE LORDS found that the inhibition could not be made use of without reduction; and found that the apprising did not make the subject litigious after denunciation, unless the appriser had proceeded in exact diligence to obtain infeftment, or to charge the superior, but having delayed for a long time, they found the base infeftment clad with natural possession, preferable to the public infeftment, though both was before the term, and in this case the new infeftment was not gratuitous or merely voluntary, because Janet Johnstoun who gave the same, was not only heir to her father, but also to her goodsire, who gave the first wadset. See LITIGIOUS.

*Fol. Dic. v. 1. p. 175. Stuir, v. 2. p. 280.*

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S E C T. XVIII.

Challenge on the Head of Interdiction, how Proponable.

1630. *March 17.*      *SEMPILL against M'NISH and DOBIE.*

ONE M'Nish, son to umquhile Robert M'Nish, and Agnes Dobie his relict, executors confirmed to the said umquhile Robert, having obtained decret against John Sempill, for a sum owing by him to the defunct; and he suspending upon payment made to M'Nish, one of the executors, and producing his acquittance thereon; and the relict, who was co-executor, and had obtained the sentence with the other, *alleging*, that that discharge would only liberate the suspender of the one half of the sum, and that the other half was yet resting to her, seeing the one executor could not discharge but his own part; and the suspender *alleging*, That the acquittance, albeit granted only by one of the two executors, yet ought to liberate him of the whole debt, seeing he had paid, and might pay the whole debt to any one of them, and he needed not to be troubled in seeking them both, and to pay a part to ilk one of them, but they ought to compt amongst themselves anent their receipts, and the executors and the debtors ought not to be troubled with any thing, which was betwixt them; for ilk one of them having found caution in the testament, thereby the debtors ought to be found *in tuto*, and that they might lawfully pay the whole to any of them. THE LORDS found, That seeing two were confirmed executors, that payment

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The Lords refused to receive interdiction by way of exception or reply, but allowed the proponer to reduce.

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might be made to the one only, of the equal half of this debt, and would not sustain the discharge, given by one of the two executors, for the whole sum, but only to liberate of the half; and the rather this was found, seeing the decret for the debt was recovered at both their instances, and decerned payment to be made to them, not bearing conjunctly and severally. And it being further *alleged*, That the discharge should not liberate for that executor's own half, who gave the discharge, seeing he was interdicted for just causes, and which interdiction, with the publication thereof, was instantly verified. This was not received *hoc loco* by way of exception and suspension, but reserved by way of reduction *prout de jure*. See SOLIDUM et PRO RATA.

Act. *Mowat.*Alt. *Larvie.*Clerk, *Scot.**Fol. Dic. v. I. p. 175. Durie, p. 507.*

\* \* \* This case is also reported by Spottiswood :

JOHN SEMPLE being addebted to Robert M'Nish in L. 200, Agnes Dobie his relict, and John M'Nish his son being co-executors to him, obtained a decret of registration against John Semple; whereupon the relict having charged, he suspended, because John M'Nish, one of the executors had given a discharge of the said sum to the suspender. *Answered*, Relevant for his own half, which he might discharge only, and not for the other executor's part. THE LORDS found, That there being more executors, a discharge granted to a debtor by one of them, will not liberate him at the other executor's hands for their parts. See SOLIDUM et PRO RATA.

*Spottiswood, (EXECUTORS.) p. 121.*

\* \* \* Auchinleck reports the same case :

THERE being two executors confirmed, one of them intromits with 8000 merks addebted to the defunct by one of his debtors, and gives to the debtor a discharge of the whole sum. The other executor charges for the whole. The debtor defends him by the discharge granted by the other executor. THE LORDS found the other executor could discharge for no more but his own part and half. See SOLIDUM et PRO RATA.

*Auchinleck, MS. p. 75.*

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Found incompetent to propose interdiction in a suspension, altho' the interdiction was

1631. *January 22.*HARDIE *against* M'CAULA.

HARDIE being charged to make payment of a sum in a bond, suspended, that he was interdicted the time of the making thereof, and done without the consent of the interdictors, whereupon he had reduction ready to be discussed, and which interdiction was also known to the charger, at the granting of the bond,