

REDUCTION.

13501

the party, seeing he had deduced comprising thereon, and so could not be reduced for not production; and in that sentence reductive, the bond was not called for to be reduced, but only the comprising, neither was there any reason libelled against the bond, but only against the comprising, and therefore the transferring was sustained as said is.

No 23.

Clerk, Hay.

Durie, p. 477.

1630. February 5. KINGHORN against STRANG.

UMQUHILE Sir John Campbell of Lundie having obtained the gift of non-entry of the lands of Pittedie, appertaining to John Lord Glamis, John Campbell, his son and heir retoured, makes assignation of this gift to Robert Strang 1584, which Robert obtained declarator thereupon, and compriseth the same lands for the bygone non-entry duties. The Earl of Kinghorn inteded a reduction of this comprising, with all that had proceeded, against George Strang, heir to Robert. In the reduction, *alleged*, The defender should not produce the assignation made by John Campbell to Robert Strang, neither yet John's retour, whereby he was served heir to his father Sir John, in respect that the pursuer derived no right from them. *Replied*, They being a ground of the comprising sought to be reduced, he had good interest to call for them to that effect. *Duplied*, He had libelled no reason against them, and so no necessity to produce them. *Triplied*, He had a reason of improbation libelled against the whole writs called for. THE LORDS found the defender should not be obliged to produce the said retour and assignation after so long a time.

No 24.
Found not necessary to produce as a title, a retour and assignation of old date.

Spottiswood, (REDUCTION.) p. 270.

1630. March 3. ORD against COUPER.

IN the reduction of a decret obtained by a party, who thereafter had deduced himself, and transferred the said decret in the person of another, which person had, upon his transferring, used all ordinary execution of horning and caption at his own instance; the first party obtainer of the said decret needed not to be summoned.

No 25.

Auchinleck, MS. p. 185.

1630. March 5. EARL of WIGTON against EARL of CASSILLIS.

IN an action of reduction and improbation pursued by the Earl of Wigton against the Earl of Cassillis, for reducing of all rights made by the pursuer's

No 26.
Found sufficient for the pursuer to prove *cum*

No 26.
processu, that
 his author
 had been in-
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predecessors to the defender's, of the lands of Lenzie and Thankerton, the pursuer libelled his interest as heir to John Lord Fleming, his grandfather, who had right to the lands libelled by disposition of James Lord Fleming his brother, the pursuer's grand uncle. *Alleged*, No process, because the pursuer shewed not where ever James (who disposed the lands libelled to John his brother) was infest. *Answered*, Offered to prove it *cum processu*. *Replied*, He could not, it being a part of his interest, but he should have verified it *in ingressu litis*. "THE LORDS sustained it to be proved *cum processu*, but before the defender should be obliged to produce, ordained it to be done;" for if that had not been shewn, the pursuer could have had no interest to call for the defender's writs. The same answer was given to another allegiance, that he shewed not where that James was heir to Malcolm Lord Fleming, who was author to the Earl of Cassillis.

Next *alleged*, no process, because none was summoned to represent that James Lord Fleming, or Malcolm one of his predecessors, author to the defender, who would be obliged to warrant the defender. "THE LORDS found, that there was no necessity for the pursuer's summoning any who be obliged in warrandice to the defender, or know them;" but that the defender himself, if he pleased and knew of any such, might intimate the plea to them.

Spottiswood, (REGALITY.) p. 271.

*** Durie's report is No 38. p. 6633., *voce* IMPROBATION.

No 27.

1630. March 20. ARCH-DEAN of ROSS *against* M'KENZIE.

THE Archdean of Ross pursues M'Kenzie of Loquhane for reduction of a tack set by his predecessors to _____, without consent of the chapter, which _____ had made the said M'Kenzie assignee to the tack. It was *alleged* by M'Kenzie, That all parties having interest were not summoned, viz. his cedent, to whom the tack was principally set. It was *answered*, That there was no necessity to summon the cedent, because he was denuded in favours of the assignee, and by virtue thereof in possession. THE LORDS found, that the first tacksman should be summoned.

Auchinleck, MS. p. 187.

No 28.

1630. July 2. DOUGLAS *against* JOHNSTON.

A MOVEABLE bond may be reduced *ex capite inhibitionis*, in so far as infestment or comprising has followed thereupon.

Auchinleck, MS. p. 187.

*** Durie's report is No 17. p. 6947., *voce* INHIBITION.