

No 75. 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.

No 76.
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,

and before. THE LORDS found the letters orderly proceeded, notwithstanding of the interdiction, and the party's knowledge thereof, in respect of the bond standing unreduced; but suspended the execution of the sentence to a certain day assigned to the suspender to do diligence, to obtain his reduction discussed.

Clerk, Hay.

Fol. Dic. v. 1. p. 175. Durie, p. 558.

No 76.
known to the charger. But time was allowed to bring a reduction.

1662. February 13. ROBERT LOCKHART against WILLIAM KENNEDY.

ROBERT LOCKHART pursues a declarator of the redemption of some lands, against William Kennedy of Achtefardel, who *alleged* absolvitor; because, before the order was used, the reversion was discharged, and the discharge registered. The pursuer *replied*, ought to be repelled, because the granter of the discharge was interdicted, before the granting thereof, and the same not granted with the interdictor's consent. The defender *answered*, *Non competit* by way of reply, but only by way of action of reduction, as is ordinary, in the case of inhibition and interdiction.

THE LORDS sustained the reply, in respect that it was not proponed, by defence to delay the pursuit, but by reply, which did only delay the pursuer himself; and also, that they thought it hard, to cause the pursuer quit his possession, and then go to a reduction.

Fol. Dic. v. 1. p. 175. Stair, v. 1. p. 98.

No 77.
Interdiction may be proponed by way of reply. This occasions no delay to the pursuer.

1671. June 20. THOMAS CRAWFORD against JAMES HALIBURTON.

THOMAS CRAWFORD having charged James Haliburton upon a decret-arbitral for payment of a sum; he suspends, and *alleges* that he was interdicted at that time, and that the interdictors did not consent to the submission, or decret-arbitral. The pursuer *answered*, *First*, That the allegiance was not competent by exception, but by reduction. *2dly*, That interdictions had only the same effect as inhibitions, and did operate nothing as to moveables, or personal execution, even by way of reduction.

Both which defences the LORDS found relevant. See INTERDICTION.

Fol. Dic. v. 1. p. 175. Stair, v. 1. p. 736.

No 78.
Interdiction cannot be proponed by exception in defence.