

REDUCTION.

13507

1666. February 16. JAMES BORTHWICK against JANET SKENE.

JAMES BORTHWICK having obtained reduction of Janet Skene's liferent-right, as *a non habente potestatem*, obtained payment of a term's rent before the decret of reduction. Janet pursues for that term, and alleges that the decret of reduction could not be effectual till it were pronounced, albeit it bear her right to be null *ab initio*, yet that is but *stylus curiæ*. It was answered, That the tenant paid *bona fide*, after reduction obtained and intimated to him, and that the Lords may *ex arbitria*, find the effect of the reduction either to be *a sententia*, if ~~it is~~ *contestation*, or a citation.

"In this reduction the LORDS assoilzied the tenant from this term, though before sentence."

Stair, v. 1. p. 357.

No 36,
Reduction found to extend to a term before sentence.

1666. February 20. LORD SALTON against LORDS PARK and ROTHEMAY.

In a reduction *ex capite interdictionis*, the LORDS repelled the defence of a preferable exclusive title in the defender, reserving the same *contra executionem*.

Fol. Dic. v. 2. p. 327. Stair.

No 37.

* * This case is No 97. p. 10420., *voce* PERSONAL and TRANSMISSIBLE.

* * The like was found where the reduction was of a fraudulent disposition *inter conjunctos*, 29th November 1671, Whitehead against Lidderdale, No 446. p. 12557., *voce* PROOF.

1666. December 7. URQUHART against FRASER.

A WADSET being granted by Sir Thomas Urquhart, elder and younger, of the lands of Brae, to Sir James Fraser, for 24,000 merks, and the granters of the wadset being obliged to warrant the rental (besides customs,) to be twenty chalders of Ross bear, and to furnish tenants, and to cause them pay the said duty, and for each boll undelivered 10 merks, Sir Alexander Urquhart of Cromarty, donatar to the escheat of the said Sir Thomas, elder and younger, pursues the heir and executor of the wadsetter, for the surplus of the rent of the said lands, exceeding the rent of the foresaid sum, for diverse years, in respect the contract was usury. It was alledged, by the act of parliament 247, anno 1597, the creditor cannot pursue for the superplus of the annualrent but by way of reduction of the usury bond, or contract, with con-

No 38.
Consent of the King's Advocate required to a reduction for usury.