

1624. January 8.

RICHARDSON *against* HAT.

No 323.

THE probation in a baron's decree against his tenant, being only the party's judicial confession of the debt, it not having been referred to oath, the LORDS sustained the decree, because instantly the obtainer of the sentence produced writ verifying the summons, which they found sufficient to maintain the sentence, although the same was not mentioned in the decrees.

*Fol. Dic. v. 2. p. 204. Durie.*

\* \* This case is No 214. p. 7496. *voce* JURISDICTION.

1666. July 21.

HELEN MILLAR *against* WATSON.

No 324.

WATSON having obtained a decret before the LORDS, against Hellen Millar, for the rent of some tenements in Glasgow, she suspends, and raises reduction, on these reasons: *imo*, That the decret was null, as being *ultra petita*, in so far as the half of the duties was only libelled, and the whole was decerned: *2do*, That Watson's right was as heir to ——— Watson, who was first wife to Brown, who *stante matrimonio* acquired this right to him, and her, and the one half to her heirs, and the other to his, which was a donation betwixt man and wife, revocable and revoked by the infertment granted to Hellen Millar in liferent, his second wife. It was *answered*, That the decret being *in foro contradictorio*, was irreducible: *2do*, That the right was not granted by the husband to the wife, but acquired from a third party.

A decree of the Court of Session, being *ultra petita*, reduced.

THE LORDS reduced the decret, finding that it was visibly extracted by error of the clerks, being *ultra petita*, and therefore sustained the second reason, albeit it was omitted, that it was a donation betwixt man and wife, being acquired to the man and wife; and so presumed to be by his means, which is equivalent as if he had been author, unless that Watson could condescend that it was by the wife's means.

*Stair, v. 1. p. 339.*

1671. February 22. ALEXANDER PITCAIRN *against* ———.

ALEXANDER PITCAIRN having right by progress to a wadset granted by James Kininmouth to Mr James Gordon, and by him disposed to Sir Archibald Sydsersf, and by him to the pursuer, pursues the tenants for mails and duties, who *alleged*, That Gordon or Sydsersf were satisfied by intromission with the rents, for which they were countable; it was *replied*, That Sir Archibald Sydsersf had obtained declarator of the expiring of the reversion, and was neither count-

No 325.

A decree was found null, as without proof, because the writ by which it was to have been proved, though libelled upon and

No 325.  
produced, was  
not narrated  
in the produc-  
tion.

able or redeemable, and for proving thereof produced the decret of declarator *in anno* 1637. Against which it was *objected*, That it was null, because albeit the libel was upon a clause irritant, whereby it is provided, if the money were required, and not paid within such a time; the reversion should expire; yet, at the compearance and production, there is no mention thereof, albeit at the conclusion, the decret bears, because the libel was sufficiently proved by production of the writs aforesaid, which can be only understood of the writs in the production, and it is not enough that they were libelled upon, for in all decreets the whole production is specially inserted. It was *answered*, That the requisition was truly produced, and that the omission of the clerk to repeat it in the production cannot annul the decree, after so long a time without a reduction thereof. It was *answered*, That albeit *in favourabilibus*, the LORDS may supply defects upon production, *ex post facto*; yet, *in odiosis*, such as clauses irritant of reversions, the LORDS ought not to admit the same.

THE LORDS found the decret of declarator null.

*Fol. Dic. v. 2. p. 204. Stair, v. 1. p. 726.*

1695. December 11. CATHARINE BROWN *against* WALTER BURNSIDE.

No 326.  
In a reduction  
of a certifica-  
tion in an im-  
probation, this  
nullity was  
not sustained,  
that there  
were several  
petitions and  
deliverances  
on debate af-  
ter the certi-  
fication.  
Had there  
been new pro-  
ductions the  
result would  
have been  
different.

PHESDO reported Catharine Brown, and Dr William Lauder, her husband; against Mr Walter Burnside of Whitelaw. Crawford of Fergushill, as assignee to Elizabeth Hamilton, daughter to Samuelstown, adjudges these lands of Whitelaw for the behoof of umquhile Mr Arthur Hamilton, advocate, first husband to the said Catharine Brown; and thereon pursuing a reduction and improbation of Mr Walter Burnside's rights of these lands, obtained a certification; of which Mr Walter (having recovered new papers) raised a reduction on eight or nine nullities for opening the said decret, which being reported this day, the LORDS repelled the first, viz. That the Master of Stairs was marked as an advocate compearing in the decret, whereas, at the time of pronouncing it, he was Justice-Clerk, and a Lord of the Session; for it was made appear, that he was an advocate compearing in the cause the time of the first debate, though he was advanced ere it came to a sentence. They also repelled the second nullity, that the certification bore date in June 1688, and yet there were several bills and deliverances on debate posterior thereto, till February 1690; for they considered that these only adhering to the former decret, with some qualities or rectifications, it had been the practice of the clerks (though it might deserve some regulation) to extract it of the date whereon it was first pronounced; but found, if there had been any new production made after the first date, and debates, reports or avisandums with the same, then the wrong date would import a nullity. Yet this, by the new article of the regulations, ratified by the King in 1695, can extend no farther for opening this decret of