

on a comprising to enter the creditor ; but, upon the vassal's resignation, which is voluntary, the superior is not at all obliged to receive a new vassal, but if he do it upon payment of a year's duty, which is a favour. *Page 384.*

1674. *January 6.* HENRY LYON *against* The APPARENT HEIRS of GEORGE HERRIOT, Bailie in the Cannongate.

HENRY LYON, pursuing the apparent heirs for payment of their father's debts, conform to several tickets subscribed by him :—It was alleged for the defenders, That the tickets were holograph, and therefore did not prove *quoad datam*, but must be presumed to be subscribed on death-bed, and so cannot burden the heirs ; likeas there is a reduction intended of the said tickets upon that reason, that they were subscribed *in lecto ægritudinis*.

It was REPLIED, That holograph writs are not null by way of exception, but only by a reduction, which ought not to stop execution, or a decret against the apparent heirs ; and all that can be acclaimed, is, that, if the defenders prevail in the reduction, the decret, and all execution thereupon, shall fall in consequence : but if the pursuer can have no decret that he may do diligence, in the mean time, other creditors, who are now *in cursu diligentia*, and comprising, will altogether be preferred, and the pursuer will not be able to come in within year and day.

The Lords did repel the defence, in respect of the reply ; and found that holograph writs were not *ipso jure* null, so as to be a ground of a decret against an apparent heir, but they ought to be reduced *via actionis* ; especially where the pursuer would be altogether frustrated for want of diligence : but they thought sufficient to declare, that, in case the defender prevailed in the reduction, the decret, and all that followed thereupon, should fall in consequence.

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1674. *January 8.* The LADY SAMFOORD *against* ALEXANDER WALKER.

THE old Lady Samfoord having set a tack of the lands of Nether Samfoord to the said Alexander, in October 1670, for the space of three years, she having died before Whitsunday, which was the term of his entry by the tack :—this Lady Samfoord, who succeeded to the liferent of the lands by her death, after expiring of the years of the tack, did pursue the tenant for two chalders of victual more than the tack-duty upon the ground,—that his tack was null, the granter being dead before the term of his entry ; and so he was liable to the full duty of the lands, which did exceed the duty of his tack by two chalders of victual, conform to a tack produced, granted to a former tenant.

It was ALLEGED for the tenant, That he could not be liable ; because the pursuer, having voluntarily suffered him to possess during the years of the tack, and received from him so much rent as, with the minister's stipends, and public burdens, which he had paid, did extend to the duty of his tack, and no more, she did homologate the tack, and so could not quarrel the same ; especially the