

No 109. a declarator, and the decret being only effectual after eviction and liquidation; which accordingly was declared by the Lords.

Betwixt the same parties, it was *alleged*, That the defender's right was ratified by a creditor, who had a comprising expired; so that the pursuer had no interest to question the defender's right; it was *answered*, That the pursuer desired only such right as was after the inhibition to be reduced, without prejudice of any other, which he could not nor was obliged to debate *hoc loco*.

THE LORDS, notwithstanding found the allegiance relevant. See LEGAL DILIGENCE.—REDUCTION.

Dirleton, No 116. & 117. p. 49.

No 110.

1680. *January 7.* M'LELLAN *against* MUSCHET.

Inhibition was found not to reach a renunciation of an infeftment of annual-rent or discharges granted by the person inhibited upon true payment. See act of sederunt, 19th February 1680, 'anent the taking renunciations from persons inhibited.'

Fol. Dic. v. 1. p. 475. Stair.

* * * This case is No. 10. p. 571, *voce* ANNUALRENT, INFESTMENT OF.

1680. *December 16.*

HAY *against* The LADY BALLEGERNO and the LAIRD of BATHAIKE.

No 111.

Inhibition was found not to exclude or burden a recognition.

JOHN HAY of Muirie as donatar to the recognition of the lands of Powrie, pursues declarator thereon. Comparance is made for the Lady Ballegerno, as heir to her father, who had a wadset upon a part of the lands, and who had used inhibition; and likewise Bathaïke compeared, having also inhibited and raised reduction of the ward-vassal's author's right, and of his own right and the deeds of recognition, as falling in consequence. It was *alleged* for the defender, *imo*, That recognition is rigorous and odious, and though it was far extended when ward-holdings were gratuitous, and granted for fidelity and service to the superior, yet now being commonly onerous, and importing no such personal service, recognition ought to be favourably and moderately sustained; and though it doth import, that the ward-vassal's atrocious delinquence against the nature of the feu, should make his right recognosce and return to the superior, without any burden not consented to by the superior, or introduced by law, yet the effect of recognition is excluded in many cases; as, *imo*, An alienation upon death-bed was found by the Lords not to infer recognition in the case of Cap-