

No 9. an order of redemption and pursues declarator of redemption against John, his son, who *alleges*, there can be no declarator, because John having comprised the reversion upon a debt owing to him by his father, viz. for the third of his father's moveables, belonging to him as executor to the deceased mother, for which third he obtained sentence against his father, upon which sentence the comprising was deduced; and the order cannot be sustained, unless there were an order against the comprising; because by the comprising the conventional reversion is consolidated with the property in the person of his son. It was *answered*, that the comprising was but lately deduced, and the legal not expired, so that the father might redeem the right made by him to his son, which will not prejudice the comprising; just as if there had been two comprising deduced against the father, he might redeem the first comprising, without prejudice of the second, and in his own time he might redeem the second also. *Replied*, that the first and second comprising being both in one man's person, both ought to be redeemed together; because by the second comprising the reversion of the first was taken away from the party against whom it was declared, and settled by the second in the comprising's person; and therefore both behoved to be redeemed, and not the first without the second, *multo magis* when the first reversion being conventional and settled in the comprising's person the one cannot be redeemed without the other.

THE LORDS refused to sustain the order, unless the comprising were redeemed also.

*Gilmour, No 152. p. 108.*

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1682. *January*      WILLIAMSON *against* THREAPLAND.

No 10.

AN inhibition was found to fall under the assignation to a bond, and sum therein contained, without the general clause of all that followeth, or might follow thereon, on a competition with the cedent's singular successor.

*Fol. Dic. v. 1. p. 422. Harcarse, (ASSIGNATION.) No 98. p. 19.*

\* \* Sir P. Home reports the same case.

JOHN WILLIAMSON, sheriff-clerk of Perth, being assigned by Agnes Lamb, relict of James Dykes, to a bond of 2700 merks, granted by Patrick Anderson of Tullieallan to her and her husband in liferent, and the children in fee, whereupon there had been an inhibition served, pursues a reduction against Sir Patrick Threapland of the right made by Anderson to him of certain lands *ex capite inhibitionis*. *Alleged* for the defender, That there could be no process upon the inhibition, because it was only an extract under the pursuer's own hand, which could not make faith for him, unless the principal were produced; as also, albeit it were produced, yet it could not be a ground

of reduction of the defender's right; because, albeit the pursuer be assigned to the debt, yet he is not expressly assigned to the inhibition. *Answered*, that the extract under the pursuer's own hand was sufficient, he having extracted the same *ex officio*, as being clerk, and if he has taken out a wrong extract, he is liable for malversation. And farther, to instruct that it is a true extract, there is another extract produced under the clerk-depute's hand; and albeit the pursuer be not assigned to it *per expressum*, yet he being assigned to the debt, and to the bond, and to all right, title, and interest, that the cedent had, it will carry a right to the inhibition, and all legal diligence that has followed upon the bond, as being accessory thereto. THE LORDS sustained the pursuer's title, although his assignation was only to the liferent, and did neither assign the inhibition *per expressum*, nor contained these general words, "with all that has followed thereupon." And found the extract of the inhibition, out of the books of the sheriffdom of Perth, under the hand of the pursuer's own depute, to be sufficient in the action of reduction, reserving improbation to the defender, as accords.

No 10.

*Sir P. Home, MS. v. I. No 80.*

1738. July 18.

MATTHIE *against* ADAM.

THE right of brewing is implied in a feu-charter, though not expressed; but, though the feuer may brew and vend in his own house, Whether he may provide the barony in ale to the dissatisfaction of the baron's granting licences to other people? was a point here stated, but not determined.

No 11.

*Fol. Dic. v. 3. p. 297. Kilkerran, (CLAUSE.) No I. p. 120.*

1748. July 5. DUNNING *against* The CREDITORS of Tilliboall.

HALLIDAY of Tilliboall disposed the lands of Briglands to Mr Alexander Dunning, minister at Abernethy, and he disposed them to Alexander his son, bookseller in Edinburgh, who was infest therein.

A ranking and sale was pursued of the barony of Tilliboall, in which Mr Dunning appeared, and craved to have his lands, with the teinds, struck out of the sale, as he was infest prior to the creditor's adjudication.

*Answered*, His lands must be struck out for the reason given, but he has no right to the teinds, much less is he infest therein, which therefore having remained with the disposer, were affected by the adjudication of his creditors.

*Replied*, A disposition of lands will carry the teinds, if by circumstances it appear to have been the intention of the parties, that they should be compre-

No 12.  
Disposition of lands with an assignation of all tacks conveys the teinds of the lands disposed.