

led, so that it was *res inter alios acta*, he ought not to be prejudged thereby, nor put to the trouble and charges of a reduction. No 18.

Clerk, *Gibson*.

*Fol. Dic. v. 1. p. 171. Dirleton, No 416. p. 204.*

1680. July 20.

A. against B.

No 19.

THE LORDS found a reduction of a retour might now be by an ordinary summons, and not by a precept furth of the Chancellery, in Latin, under the quarter seal; and, that the act of sederunt, mentioned by Durie 1633, was in desuetude. See APPENDIX.

*Fol. Dic. v. 1. p. 170. Fountainball, MS.*

1688. July 26. Captain JOHN RAMSAY against GEORGE RAMSAY.

No 20.

CAPTAIN JOHN RAMSAY, immediate younger brother to the late Earl of Dalhousie, being abroad, his younger brother, George, serves himself tutor of law to the Earl's children. John returning home, and claiming his right, took out a brieve for serving himself tutor; whereon there is first an advocation presented; and, being refused, a petition was given in to the Lords for George, the present tutor; whereon the Lords stopt the service, till both parties should be heard. And at a calling, it being *alleged, tutorem habenti tutor dari nequit*; and that George's gift standing, and being clad with long possession, it behoved to be reduced, and Captain John to prove that he was elder brother; the LORDS, considering that this was *notorium quod non eget probatione*, and that the tutory was *ipso jure* null, and needed no reduction, they summarily annulled it, and ordained John's brieve to go on.

Found that an erroneous service of a tutor at law might be summarily annulled without reduction.

On a new bill and hearing, it was *alleged*, That the Earl, in his testament, had made a nomination of tutors, and three a *quorum*; and there were three who actually now accepted, viz. Sir George M'Kenzie, Sir John Ramsay, and John Johnston of Poltoun; and Mr Moor, the Lady's brother, would also accept; though it was objected against him, that being an English-Irish he was uncapable. But the act of the *post nati* made by King James VI. habilitated him. The Chancellor was so offended with Sir George, that it moved him to say, that when the King had ado with him, he always pretended either conscience or prior engagements. *Answered*, They could not accept now after six years cessation and negligence, and suffering one to enter tutor of law who had no right; and Sir John Ramsay had virtually renounced the office by acting as factor under him, and never making his compts yet, and so could not recur now. *Replied*, No prescription runs against tutors nominate, neither by the common law, *l. 11. D. de testamentar, tutel.* nor by our decisions; 17th December 1631,

No 20.

Auchterlony, *voce* TUTOR and PUPIL; and the other cases there cited: Whereas a tutor of law ought to claim his right within the year, which Captain John did not, and Sir John Ramsay could not accept alone till other two would act with him, and so he did not renounce; and he is responsible and most willing to compt. THE LORDS, much against the Chancellor's inclination, preferred the tutors-testamentar; in which the President was very zealous, seeing they designed to put him in the hands of his uncle, a papist, that the child might be bred at Doway. Instruments were taken by Captain John against the accepting tutors. *imo*, That they may be liable for L. 200 Sterling of pension the Earl would get, if the King had the disposal of his education. *2do*, To be liable for all the prejudice he has sustained through their acceptance these six years bygone. But tutors nominate are only liable from the date of their acceptance; which, as I have observed *alibi*, is most unjust, and was only introduced by Gosford, in his cousin, Wedderburn of Kingennie's case with Scrimzeour. See TUTOR and PUPIL.

*Fol. Dic. v. 1. p. 171. Fountainball, v. 1. p. 515.*

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SECT. V.

Whether Reduction be requisite of Decrees Arbitral;—Of Legal Instruments;—Of Inhibitions;—Of a Deed executed by a Woman *vestita viro*;—Of a Decree of Preference in a Multiplepinding.

No 21.

Found that no exception of iniquity, nullity, &c. can be proponed against a decree-arbitral; a reduction only being competent.

1540. February 11.

HAMILTON *against* HAMILTON.

NA exceptioun of iniquitie, nullitie, or uther quhatsumever, may be proponit or allegit contrare the executioun of ane decreete-arbitral lauchfullie given. But the proponer thair of sould use and allege the samin, be way of actioun, gif he pleisis, for reductioun and retractatioun of the said decreete.

*Fol. Dic. v. 1. p. 171. Balfour, (ARBITRATION.) p. 415.*

No 22.

A party producing an instrument of requisition, and the other party offering to prove directly the contrary of what was

1583. February.

EARL of CRAWFORD *against* OGILVIE.

THE Earl of Crawford warned Ogilvie of Beish to hear and see certain lands of, &c. to be lawfully redeemed, and consigned the soume of       merks, together with ane letter of tack after the redemption of nineteen years, conform to the bond of reversion. The silver and the tack being produced before the Lords, it was *alleged*, That the tack was not the first tack that was consigned, but newly made and forged, and sua the first tack being uplifted after the con-