

No 46. Nor again is it a novelty, to reduce and even improve writs upon production of copies; July 6. 1669, Barclay *contra* Captain Barclay, No 133. p. 7417; for if the principal differ from the copy produced, the principal writ continues safe, and the reducer gets his labour for his pains.

THE LORDS found that the extract satisfied the production.

Forbes, p. 132.

Nota, The Session, because of the Parliament's sitting, was adjourned to the 4th day of February 1707; and the time and space betwixt the 1st day of November 1706, and the said 4th day of February declared not to be reckoned in any annual prescriptions. But in respect of the adjournment aforesaid, the month of March 1707 was added to the sitting of the Session, acts 1st, 4th, and 5th, Session 4. Parliament 1. Q. A.

1708. *January 28.*

Sir Hugh DALRYMPLE of North-Berwick, President of the Session *against*
Sir JOHN INGLIS of Cramond.

No 47.

Whether a reduction of an act of litiscontestation might be repeated, without awakening or transferring?

MY Lord President having given in a bill to the Lords, representing that he had transacted with all the creditors upon the estate of North-Berwick, purchased by his Lordship at a public roup, except Sir John Inglis of Cramond, against whom he had obtained a decret of declarator of extinction of his debt, and therefore craving up his bond for the price according to the act of Parliament 1696; Sir John presented a counter-bill, upon which a hearing was allowed to both parties.

Alleged for Sir John Inglis; He had raised reduction of the decret against him upon this ground, that the same was not only in absence, but null, in respect there was a depending process at the instance of his father against the tenants of North-Berwick, wherein the Lord Balmerino, my Lord President's author, was compearing, and an act extracted, which ought to have been awakened and transferred against Sir John; and my Lord President, an assignee to a litigious right, who is in no better case than his author, could raise no new separate process neglecting the former. For *lue pendente nihil innovandum*; and it would occasion confusion and multiplicity of pleas, if one party were allowed to relinquish a depending process, and raise a new one at his option.

Replied for my Lord President; That though he had no other title but as assignee by my Lord Balmerino, he may repeat, as he does, a reduction of that act upon which Sir John summarily quarrels his decret; but as purchaser at the roup he has a special and unquestionable interest to bring the competition to a decision; without being concerned in any former question about mails and duties before the sale. Nor is it of any moment to object, that the pursuer's title of the sale was a disposition from the Lord Balmerino; for any person

may purchase, whoever pursues the sale, and the purchaser gets a distinct right as the highest offerer; and any purchaser, before the regulations appointing rankings to precede sales, might acquire what rights he pleased upon his peril, and then pursue the other creditors for declaring the price exhausted, as was done in this case.

No 46.

Duplied for Sir John Inglis; He having produced the act in the former process, in order only to instruct the reason of reduction of the declarator against him, my Lord President could not be allowed to repeat a reduction of the said act instantly; but must awaken and transfer the former process, or else go in his reduction as accords *via ordinaria*, that Sir John may have the *inducia legales*; 2do, A decret of sale being but a judicial alienation for the behoof of creditors, it cannot prejudice them, or afford any new title to quarrel their rights; so that the President could only quarrel Sir John's right upon the interest of creditors conveyed to him, which were all in the field in the former process at old Cramond's instance.

THE LORDS repelled the dilatory defence proponed for Sir John Inglis; and found that my Lord President might repeat his reduction of the act of liti-contestation summarily, without awakening or transferring.

Forbes, p. 232.

1713. July 23. Captain ADAM BLAIR *against* JOHN BLAIR of Glasclune.

No 47.

CAPTAIN Adam Blair having, as infest in the estate of Glasclune upon a charter of adjudication, pursued a reduction and improbation of John Blair's rights and titles thereto; the LORDS found it competent to the defender to exclude the pursuer *personali objectione*, upon a renunciation of all right to the estate, and disposition by the pursuer's author in favours of the defender's predecessor, anterior to the bonds whereupon the pursuer's adjudication was led; these bonds being gratuitous; July 15. 1675, Alexander *contra* Lundies, No 64. p. 940; albeit the rights produced by the defender were only personal, not completed by infestment.

Forbes, p. 708.

1713. December 17.

DAVID AUCHINMOULIE of Drumeldrie *against* Sir WILLIAM HOPE of Balcomy and Others.

No 48.

Sir William Hope having obtained a decret of ranking of the creditors upon the estate of Balcomy, and brought it to a public roup, at which he was preferred as the highest offerer, and got the estate adjudged to him for the price to be paid to the respective creditors as preferred, Drumeldrie, a real creditor

Found in conformity to Learmonth *against* Preston's Creditors. No 45.