

betwixt the Creditors of Balmerino and Coupar is plain, for apparent heirs, as such, have the privilege to reduce death-bed deeds to their prejudice; seeing their simple consent, though not entered, excludes all reduction at the instance of them or their successors; which privilege is not to be extended to other cases. As to personal creditors upon the act of Parliament 1621, their privilege is founded on a particular statute; and reductions *ex capite inhibitionis* are founded in law; besides that the inhibition, in some measure, affects the subject.

Triplied for the pursuer; Though adjudication cannot force production of rights completed by infestment, yet a naked adjudication is, of itself, a sufficient title to reduce even rights completed by infestment, when produced.

THE LORDS sustained the pursuer's title, he completing the same by an adjudication, before he can further insist; and, in the mean time, stopped procedure in the process.

Thereafter, 20th March 1707, the defenders craved that the Lords would explain their foresaid interlocutor, by declaring that nothing more was intended thereby, than that the pursuer should not be put to further expense and loss of time, in raising a new process; and that the citation is not sustained as to other effects that may, perhaps, afterward occur in the process, *viz.* as an interpellation against the defender, to hinder a posterior edict or confirmed testament, to cover a prior intromission from vitiosity; for that, it is no new thing to sustain citations *ad fundandam litem*, which have been repudiated as to other effects, as in declarators of non-entry.

Answered for the pursuer; It is needless and incompetent, in this state of the process, to desire the Lords' answer to queries: For, whatever debate may arise in the course of the process, as to the particular effects of the citation, that comes in most properly and naturally, when any such effects are insisted on by the pursuer; it not being the Lords' way to determine points upon supposed cases.

THE LORDS declared, that the allowing process to go on at the pursuer's instance, he completing his title, is only to be understood for carrying on the process without any new citation; and that the citation, as to other effects, can have no force but from the completing of the title, which makes the pursuer an idoneous contradictor.

Fol. Dic. v. 2. p. 305. Forbes, p. 145.

1709. July 2.

MR JAMES INGLIS, of St Leonard's, *against* LORD ALEXANDER HAY.

AT advising the reasons of reduction of a decret of preference, obtained by Lord Alexander Hay against the Creditors of Mr Cornelius Inglis of Eastbarns,

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The pursuer of a reduction not allowed to repeat incidenter a proving.

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the tenor of a writ, necessary to make up his active title.

pursued against Lord Alexander by Mr James Inglis, as having right by progress to an infeftment of annualrent for L. 184, out of the estate of Eastbarns, upon an heritable bond granted by Mr Cornelius Inglis, the heritor, to Mr Patrick Kelly, for the sum of 4600 merks; the defender having *objected*, That the pursuer did not connect a process of right to the infeftment of annualrent, by producing the precept of *clare constat*, upon which Janet Kelly, his immediate author, was infeft as heir to Mr Patrick Kelly, the original creditor; the LORDS would not allow the pursuer to repeat a proving the tenor thereof *incidenter* in the process of reduction; albeit the defender, in a process, is sometimes allowed to repeat *incidenter* a tenor of writs founded on for his defence; because the pursuer, before he convened the defender in his reduction, ought to have made up a sufficient title for prosecuting his intended action, and cannot be allowed an incident for making up his title.

Fol. Dic. v. 2. p. 305. Forbes, p. 338.

1712. July 3.

Mr JOHN SPOTTISWOOD, of that Ilk, Advocate, and other CREDITORS of Mr ALEXANDER BROWN of Thornydykes, *against* ALEXANDER BROWN of Bassendean.

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Reduction of a disposition of lands, on the act 1621, being raised, but not sustained, at the instance of the granter's personal creditor, the process, which sisted during the time the creditor was expediting his adjudication, was allowed to go on, after he obtained and produced it, without the necessity of raising a new summons.

MR JOHN SPOTTISWOOD, and other personal Creditors of Mr Alexander Brown, having pursued reduction, upon the act of Parliament 1621, of a disposition of the lands of Bassendean, granted by Mr Alexander to Alexander Brown, his second son; the LORDS, 24th June 1709, found, that a disposition, though not completed by infeftment, could not be reduced by a personal creditor: Whereupon the process stopped till the pursuers had adjudged; and then they insisted in their former reduction.

Alleged for the defender; The adjudication cannot be a title to insist in the old process; because, in all reductions, the pursuer's active title ought to be libelled, and given out *in initio litis*.

Replied for the pursuers; Albeit the adjudication be posterior to the summons of reduction, the bonds whereon it is founded are prior: And the Lords do ordinarily sustain an imperfect title *ad inchoandam litem*, as a charge upon a bond requiring requisition; 28th June 1671, Hume *contra* Lord Justice Clerk, *voce* REDEMPTION; a general disposition *omnium bonorum, jus sanguinis* in an apparent heir, or nearest of kin; and allow requisition to be used, a confirmed testament or retour to be produced *cum processu*, and the original process then goes on as if the title had been complete at the beginning.

Duplied for the defender; The instances mentioned by the pursuers do not meet the case; for requisition was allowed *pendente lite*, because the bond, and not the requisition, was the active title; whereas here, the adjudication, and