

1777. *February 18.* MAXWELL and COLTART *against* Other CREDITORS of CASTLEBANK and the PURCHASERS.

IN the same ranking of Castlebank, on another application of the same nature, but which was opposed only by the other creditors, but not by the purchasers, the Lords pronounced an interlocutor, granting a warrant in the same terms, and on the like caution.

REDUCTION.

1765. *December 20.* CAMPBELL of OTTAR *against* The DUKE of ARGYLE.

IN the case of Campbell of Ottar *against* The Duke of Argyle, the defender, who was called upon to produce all his rights and titles to the lands of Ottar, declined to take a day; produced a charter of the lands, granted to his ancestor, with a connected progress thereto, and infeftment following thereon, confirmed by possession for more than 40 years: and he contended that this progress was sufficient, and did exclude the pursuer. In this case the writings produced to exclude were part of those specially called for in the reduction; and it was contended, that they could not exclude the pursuer: but this, notwithstanding positive prescription having followed upon them, was held, under authority of the Act 1617, sufficient to bar every challenge, forgery excepted. The Court accordingly found, 20th December 1765, “that the titles produced for the defenders, with the possession following thereon, are sufficient to exclude the pursuer from the whole subjects under challenge; and therefore assoilyies the defender from the process, and decern.”

This decree was affirmed in the House of Peers, 10th February 1770.

This point again occurred, 24th *January* 1766; petitioners *Dunlops* *against* an *Interlocutor of Lord Kennet, Ordinary*. The court were of the same opinion as in Ottar’s case, but, without pronouncing an interlocutor, remitted the petition to the Ordinary.

It again occurred, 27th *June* 1776; *David Orme* *against* *Patrick Leslie Duguid*. The Lords pronounced this interlocutor,—“In respect that the ratification founded on* does not comprehend all the deeds brought under challenge

* The ratification was one of the deeds sought to be reduced.

by the present reduction, find that the defender is bound to satisfy the production as to all the others of said deeds not satisfied; reserving to the defender, at discussing the reasons of reduction, to be heard on his objections to the pursuer's title, and on all his other defences whatever, as accords; and remit to the Ordinary to proceed accordingly."

N.B.—In a reduction, all defences against a pursuer's title ought to be proponed before taking a day, and argued in that state of the process, otherwise they are held to be past from, or overruled, unless they are expressly reserved.—*Reg.* 1672, § 25.

1776. *June 27.* ALEXANDER IRVINE of DRUM *against* The EARL of ABERDEEN, &c.

ALEXANDER Irvine of Drum, as heir of entail of that estate, brought an action of reduction, improbation, and declarator, for setting aside a variety of incumbrances affecting it, and, in particular, a decret of ranking and sale of the estate as bankrupt. His reasons of reduction proceeded on the entail, and on fraud practised by the purchasers at the judicial sale, who were also the conductors of the ranking, in rearing up fictitious debts for making the estate bankrupt, and in bringing about a sale at an under value. The defender attempted to exclude, by producing the decret of sale itself brought under challenge, which they contended was good against all mortals. They produced also a ratification of the defender's rights, by John Irvine of Drum, *anno* 1737, with a decret of absolver, at their instance, against Alexander Irvine of Drum, who had pursued them to account, and for implement of certain articles relative to the sale; and it was contended, that, as the present pursuer represented both these lairds of Drum by a universal passive title, he was barred from challenging the decret of sale. It was answered,—That to pretend to exclude, by producing the decret of sale under challenge, was reasoning in a circle: and as to the other two deeds, these could never amount to an exclusive title, the last being only relative to certain articles, not to the sale in general; and as to the first, no ratification by a predecessor could prejudice his heir who claimed not as heir of line but as heir of tailyie. The Lords pronounced no judgment at first on the general point; but, 19th February 1767, before answer, they appointed the pursuer to give in a particular condescence of the articles of fraud and other objections to the decret of sale and of the other special reasons of reduction. They enlarged this, 5th March 1767, and extended it to the other deeds under reduction, *viz.* debts and incumbrances affecting the estate conveyed to the defenders. Condescences were given in, and, 27th January 1769, the Lords found, "That the defenders were not bound in *hoc statu* to produce the writs and deeds called for."

But, this interlocutor being reclaimed against, the Lords adhered, "without prejudice to the pursuer to call the defenders to account for any particular debt against which he alleges fraud, reserving all defences as accords."