

No 2. 1593. November 4. A. against B.

A DECREE of an inferior Judge, pronounced upon the liquidation of prices, without probation, was found null without necessity of reduction. See APPENDIX.
Fol. Dic. v. 1. p. 169. Erskine, MS.

No 3. 1594. November 26. The EARL of MORTON against LORD FLEMING.

A decree pronounced against a party absent *rei publicæ causa* was found not to be *ipso jure* null, but that it must abide the course of a reduction.

DECREETS given against a man subject to the proclamation, or absent *reip. causa*, are not so null of the law as that they may be taken away by exception, or summarily by a bill or summons upon six days, but must abide ordinary reduction, and continuation to try such things as consist *in facto*, as the proclamation, and the party's estate, and necessity to obey it, or his absence *reip. causa*, which consists *in facto*.

Fol. Dic. v. 1. p. 169. Haddington, MS. No 432.

No 4. 1605. June 19. MILLER against SPANG.

Decree of removing had been pronounced against a woman *vestita viro*. In a reduction of this decree, after her husband's death, she was allowed to plead defences competent, omitted in the original action, alleging, that the omissions of her husband, who had made appearance for her, ought not to prejudice her.

IN an action betwixt Miller and Provand, for reduction of a decree of removing, it was excepted by the defender, that he should be assoilzied from the second reason, because that this woman, now pursuer of the reduction, could not have been removed at the instance of the warner, because his father, to whom he was heir, had bound himself, by contract, to infest her in conjunct fee in the lands libelled, by virtue whereof she was in possession, and so could not be removed at the instance of the warner, who was heir and should warn. Against the which reason it was answered, That, notwithstanding thereof, his decree stood, and was lawfully given; because, it being proven *in foro contradictorio* against this woman compearing, she could never be heard to reduce upon an exception competent and omitted, she compearing. It was replied by the pursuer of the reduction, That if any ways she compeared in that first action of removing, her compearance was by a procuratory at command of her gude-man, she being then clothed with a husband, whose omission of a defence could not prejudice her without her own consent, no more than his alienation of her liferent without her consent: Otherwise, if it was permitted to husbands to compear and omit the just defences competent to the wife, when they could not induce the wives to sell their liferents, they would suffer them to be evicted by colluded decreets given against them, compearing and omitting their best defences; which could not prejudice her; but she now being so, had place to the said exception omitted, and not proponed in the first instance, as a relevant reason of reduction in the second instance. The matter being reasoned amongst

the LORDS, and almost the whole members inclining to find the reason relevant and competent in the second instance, I reasoned, on the contrary opinion, *ab inconvenienti* to the inconvenient proponed for the wives, because *rerum judicatorum auctoritas firma immutabilis esse debet*; and if this which is now libelled be admitted, and the exception founded upon the first decret of removing be repelled, it shall not be possible to any man to obtain any sure decret against any woman clothed with a husband; because, after that she have compeared, and defended, and vexed the party both with delays and all manner of defences in her husband's time; albeit decret be obtained against her *in foro contradictorio*, yet, after her husband's decease, she shall have place to reduce the decret upon reasons competent in the first instance, and omitted *per* chance wilfully to give occasion for more play; and so it shall not be possible to a man to obtain a certain decret, and unreduceable against a woman clothed with a husband; notwithstanding whereof the LORDS sustained the reason of the findings; the rather because it was founded upon the deed of the defender's father to whom he was heir.

Fol. Dic. v. 1. p. 169. Haddington, MS. No 826.*

No 4.

1628. *January 25.* KENNEDY against M'DOUGALL.

IN a suspension betwixt Kennedy and M'Dougall, Kennedy being decerned, as lawfully charged to enter heir to her father, to pay a debt of her father's, which decret was given against her, she compearing and offering to renounce to be heir; and a term being divers times assigned to her compearing to produce the said renunciation, and failing to do the same, she was decerned as lawfully charged *in foro contradictorio*, as said is. This decret was suspended, upon production of a renunciation to be heir, which renunciation the LORDS found might be received by way of suspension, notwithstanding of the foresaid decret given against her compearing, as said is, without any other process for reducing of that decret, seeing the suspender was then, at the giving of the sentence, and yet was, at the time of reasoning of the suspension, still minor.

Act. Nivalson.

Alt. Primerosa.

Clerk, Scot.

Fol. Dic. v. 1. p. 169. Durie, p. 331.

No 5.

A decree against a minor, as lawfully charged to enter heir, being suspended upon production of a renunciation, the Lords found that this renunciation might yet be received by way of suspension without necessity of a reduction.

1632. *November 24.* HIND against L. WEDDERBURN.

ONE Hind pursues removing, as heir to his goodsire, who was infest in some husband-lands in Coldinghame, against L. Wedderburn and his tenants; and he defending and excepting, that his father had obtained decret of removing against this pursuer's goodsire, to whom the pursuer is heir, by virtue of which decret his father, during his lifetime, and since this defender, hath been in con-

No 6.

A nullity proponed by way of reply, was refused to be sustained against a standing decree, altho'