

1681. November 16. M'DOUGAL *against* ARBUTHNOT.

No 179.
Merely executing a summons of reduction, found to interrupt the prescription of the *quadriennium utile*.

IN the action pursued by M'Dougal against Arbuthnot of Fiddess for payment of a debt due by Archibald Arbuthnot, Fiddess' brother, to the said M'Dougal, which the said Arbuthnot of Fiddess was, by his missive letter, obliged to pay; it being *alleged* for the defender, That the said missive letter was written in his minority and to his lesion, whereupon he had raised a reduction *intra annos utiles*; it was *replied* for the pursuer, That no respect could be had to the reduction, seeing it was raised in *anno* 1677, and only one execution for the first diet, so that the instance was perished and could not be insisted in. THE LORDS found that the raising and executing the summons, once *intra annos utiles*, was sufficient to interrupt the prescription, so that he might yet insist, albeit the *anni utiles* were run, and have the benefit of restitution by way of reduction.

Fol. Dic. v. 1. p. 586. P. Falconer, No 11. p. 5.

* * * Harcarse reports this case :

1681. December 16.—A MINOR having revoked and raised reduction *debito tempore*, and the reduction being suffered to lie over five years without insisting, so as it was expired by the late act of prescription, the LORDS found that the very executing of the reduction was interruption of the prescription of the *quadriennium utile*, and that the pursuer might yet raise a new summons of reduction, though the *quadriennium* was elapsed.

Harcarse, (MINORITY.) No 699. p. 197.

* * * This case is also reported by Sir P. Home :

1682. March. ——— M'DOUGAL having pursued ——— Arbuthnot of Fiddes, for payment of a sum contained in a letter written to M'Dougal, by the deceast Archibald Arbuthnot, the defender's brother; *alleged* for the defender, That the letter was written to his brother in his minority and to his lesion, upon which reason, he had raised a reduction of the letter *intra annos utiles*. *Answered*, That no respect could be had to the reduction, because it being raised in the year 1677, and only executed for the first diet, *perit instantia*, he not having insisted in the action *intra annos utiles*. THE LORDS found that the raising and executing of the reduction *intra annos utiles* was sufficient to give the defender the benefit of restitution against the letter, albeit the reduction was not insisted into *intra annos utiles*.

Sir P. Home, MS. v. 1. No 244.