

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.

No 48.

upon the estate, against whom the term was circumduced for not producing his interest in the decret of ranking, raised reduction thereof against Sir William Hope, the purchaser, and the ranked creditors, and insisted for production of the decret.

Alleged for the defenders; That decret being a writ *in publica custodia*, they cannot be obliged to produce it in a reduction, but the pursuer must extract and produce it himself.

Answered for the pursuer; The decret of ranking being the common interest of all the creditors, and he being a creditor, it would be out of measure hard to exclude him from the use thereof; especially seeing he is willing to pay a proportional part of the charges of extracting, conform to his interest, and to extract it by himself, would more than sink his claim, which is less than the expense of extracting; *2do*, The reservation of reduction as accords, in the decret, implies, that he should have access to make his rights effectual.

Replied for the defenders: Whatever the ranked creditors might have to say for their being indulged the use of the common decret, the pursuer, who, by his own fault, is excluded, can have no pretence to it, especially for such an end as he wants it for, viz. to overturn it; *2do*, The reservation of reduction, as accords, is only in the common method of law, which obligeth the pursuer to produce writs called for that are *in publica custodia*.

THE LORDS found, That the pursuer, if he insists in his reduction, must satisfy the production himself.

Fol. Dic. v. 2. p 326. Forbes, MS. p. 13. & 14.

1717. January 24.

MUIR against MILLER.

No 49.
In a reduction, the defender must produce his own extracts; and the pursuer is not put to the expense of taking out new extracts.

IN a single reduction, at Muir's instance against Millar, the pursuer having craved certification *contra non producta*, the defender gave in a condescence of the dates of the registration of the writs called for in the Books of Council and Session: yet the pursuer insisted for certification, and *alleged*, That the defender ought to produce the extracts; because albeit a condescence be received in improbations, the reason is, because extracts cannot satisfy the production; and the pursuer, being certified of the dates of the registration, may apply for transmitting the principals for satisfying the production; but, in a simple reduction, extracts being sufficient, it lies upon the defender to produce the same.

It was *answered* for the defender; That reductions are always libelled in improbations, and generally the pursuer libels falsely only to force production, when nothing is intended but only to insist in the reduction; and, therefore, the pursuers of improbation commonly desire no more but the production of extracts; yet there is never more required of a defender in an improbation,