

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 assolizied 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 his decreet 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