

R E D U C T I O N .

A. against B.

1mo, **T**HE defender excepted against the citation, and *alleged*, That J. S. and J. T. tutors and curators, were not summoned. The pursuer abode at the last execution of the wakening.

No 1.
Exceptions in
a reduction
against the
production.

2do, *Alleged*, He ought not to produce the assignation called for to be reduced, because it was registered. *Answered*, He must show where it was registered. Ordained the defender to produce it.

3tio, No process for the lands contained in the pursuer's charter, and reserved in the sasine to the defender in liferent. Relevant.

4to, No process upon the sasine transumed, because it is transumed *pendente lite*, after the intending of the cause, to work against the defender, who had special interest; and he was never summoned to that effect. *Alleged*, That ought to be repelled, in respect of the decret of transumpt standing, all parties having interest being called; and, further, the defender appeared by his procurator, and made defence against the transuming of the instrument. Repelled this allegiance. THE LORDS ordain the defenders, not called to the transuming; to allege presently wherefore it should not have been transumed against them, and ordained them to see the prothocal book. Afterwards the defender declared he had nothing to say against the transuming.

5to, The pursuer can have no interest to call for reduction and production of any infeftments of lands, except of A. because there are no other lands contained in his sasine. *Answered*, Not competent *hoc loco* against the production, after satisfying whereof let it be alleged against the reduction; and, further, the whole lands libelled, are lawfully united with the lands of A. which he offers to prove *cum processu*. *Duplied*, He ought to show the union instantly. THE LORDS admitted the union to be proved *cum processu*, and found

No 1. that the sasine produced gave the pursuer action. Next *alleged*, That the pursuer should condescend upon the special time of the union, because, in that case, the defender would take it away by a relevant allegiance, viz. That the union is broken. *Answered*, He offers him to prove that the union was made in the pursuer's grandfather's time, by the superior, and the place of A. appointed for the taking of sasine there of the whole lands. Probation in this with the former allegiance of union, reserving to the defender his allegiance of disunion *contra producenda*.

Afterwards *duplicated* by the defender, That the allegiance anent the union made by the superior should be repelled, unless the pursuer will say, that he is vassal to the said superior; for the lands of A. being disposed to the pursuer by his father, (who was vassal to the Laird of D.) to be holden of himself, cannot profit this pursuer any thing in regard of the union, except they had been disposed to him holding of the superior. *Triplied*, That the whole lands of A. being disposed to him, and he having received sasine by his father *propriis manibus* thereof, likeas the same is confirmed by the superior, he must have the benefit of the union. *Quadrupled*, That he being only seased in a part, and the confirmation being only of that part wherein he was seased, that confirmation is not sufficient to infer an union. THE LORDS repelled the allegiance *hoc loco*, and, notwithstanding thereof, ordained to exhibit, but prejudice of the proponing and discussing of the same allegiance in the cause, after satisfying of the production.

The defender protested, that notwithstanding the production he may be heard to oppone against the interest of the party, and sicklike, that it be without prejudice of his other defences.

Excepted against the reduction, *imo*, The sasine which gives the pursuer action to reduce, is transumed *lite pendente*, and the defender, who had special interest, not summoned to it. *Replied*, Upon the decret of transumpt standing, all having interest being called in general, and certain in special. Repelled.

2do, The sasine transumed can give no action to reduce the infeftment of such lands as are not specially nominate therein, which are these, viz. ——— *Replied*, That the pursuer passeth from reduction of all infeftments not specially expressed in his sasine.

3tio, The sasine can give no action to reduce the infeftment of liferent given to one of the defenders, of lands specially reserved in the pursuer's transumed sasine. *Replied*, He quarrels no such liferent reserved, but that which is granted after the pursuer's sasine, which he may by virtue of his fee granted before: As for the other specified in his sasine, he quarrels it not because it affirms his fee, but only posterior liferents. The allegiance was repelled in respect of the reply.

499, The sasine can give the pursuer no action to reduce infeftments of any other lands therein specified, except of the lands of A. whereof sasine was only taken, especially no union being shown or produced. *Replied*, The same given at A. is sufficient for the whole lands before specified in the sasine; for if the pursuer's father, as superior, had directed his precept for giving sasine to this pursuer upon the lands of A. which should suffice for the whole remanent lands, the same sasine would have been sufficient for all, *nam declaratio voluntatis superioris* is as good as a sasine, *multo magis* the personal presence of the superior giving sasine *propriis manibus* must be good for the whole lands specified, and infer an union. *Duplied*, That the lands specified in the pursuer's sasine lying discontigue, having divers other lands interjected, sasine taken on a part thereof will never be extended to the whole without a special union. The last allegiance was likewise repelled.

500, No process upon the pursuer's sasine, because it bears to be given *secundum tenorem chartæ conficiendæ*, and the defender will offer to prove that the charter, granted by the pursuer's father to him, was to be holden of the superior: Likeas, the pursuer hath accepted a confirmation of the same from the superior, long after the infeftments made to these defenders by the pursuer's own author; *ergo* as a charter given to be holden of the superior without confirmation, will neither give action nor exception, *multo minus* shall a charter accepted from the self same author with the defenders, to be holden of the superior, and not confirmed till after the defender's infeftments, give the pursuer action to reduce their infeftments preceding his confirmation. *Answered*, That ought to be repelled, in respect the sasine which the pursuer useth for his title, bears only to be given *secundum tenorem chartæ conficiendæ*, not specifying of whom the lands should be holden; for contrarywise, by the sasine, it is clear that the lands should be holden of the granter, seeing it bears no special holding: And, further, the pursuer's confirmation must be drawn back to the sasine which preceded long the defender's infeftments. This allegiance was repelled.

600, *Alleged*, That the reason of reduction, against the defender's assignation to certain reversions founded upon a prior assignation of the same made to the pursuer, is not relevant; because, before the date of the pursuer's assignation, the defender was made assignee to certain reversions, which first assignation bore this clause, That the same should be reiterate and renewed at the receiver's pleasure, by virtue whereof it was renewed; and this assignation produced, albeit it be posterior to the pursuer's in date, yet it depends upon the former, which two assignations he conjoineth in one. *Answered*, Not relevant, because, when produced, it bears no mention nor relation to the former. Probation in this allegiance.

No. 1.

710. The defender had intimated his assignation long before the intending of this cause, and before any intimation made by the pursuer of his assignation; so that, as in double poindings, agitated upon two assignations, the first lawfully intimated will be preferred, although posterior; so this last assignation first intimated cannot be quarrelled or reduced by one not intimated. *Answered*, Notwithstanding the first assignation must be preferred, because *res sunt adhuc integra*, the lands not being yet redeemed; and the cedent could not grant a new assignation to any, being denuded before. Probation in this allegiance too.

Then it was *replied* to this last exception by the pursuer, That he had recovered by virtue of his assignation the most part of the reversions contained therein, which assignations were made to his cedent before his said first assignation to the defender, and that upon alienations made before the pursuer's sasine libelled. *Duplied* by the defender, Not relevant, because general, not condescending on the number of the reversions recovered, and the time when. Find the reply relevant for so many of the reversions as are in the pursuer's hands, he being special upon them.

The pursuer produced eight reversions, whereon he grounds his reply. Further *alleged* by the defender, The pursuer should condescend on the time of the recovery, and from whom; for albeit the cedent could not be heard to propone this, yet the defender, being a third person, who did intimate first assignation, has good right to try how they came into the pursuer's hands, and to say against them. Find the pursuer needs not to condescend on the time or manner of the recovery of these reversions, in respect they are in his own hands.

Spottiswood, (REDUCTION.) p. 266.

1542. *March 9.* JOHN HALIBURTOUN *against* HELENE RUTHERFURD.

No 2.

Found that a depending reduction of a decree cannot stop execution thereupon.

GIF ane decrete of ejection or spuilzie be gevin aganis ony persoun, he may call and persew for reduction thairof, albeit he has not fulfillit nor obeyit the samin, nor zit maid restitution, conform thairto, of the gudis and geir spuilzeit be him, to the obtenar of the decrete; because the commoun rule, spoliatus ante omnia est restituendus, stoppis him not to seik reduction of the said decrete, and has onlie place, quando agitur super proprietate rei spoliatae, vel de alia re, agendo principaliter; et non quando agitur per viam reductionis, ad retractandam sententiam, super spolio contra aliquem latam: And zit nevertheless, the intending or dependence of the said reduction sould not