

No 20.

Auchterlony, *voce* TUTOR and PUPIL; and the other cases there cited: Whereas a tutor of law ought to claim his right within the year, which Captain John did not, and Sir John Ramsay could not accept alone till other two would act with him, and so he did not renounce; and he is responsible and most willing to compt. THE LORDS, much against the Chancellor's inclination, preferred the tutors-testamentar; in which the President was very zealous, seeing they designed to put him in the hands of his uncle, a papist, that the child might be bred at Doway. Instruments were taken by Captain John against the accepting tutors. *imo*, That they may be liable for L. 200 Sterling of pension the Earl would get, if the King had the disposal of his education. *2do*, To be liable for all the prejudice he has sustained through their acceptance these six years bygone. But tutors nominate are only liable from the date of their acceptance; which, as I have observed *alibi*, is most unjust, and was only introduced by Gosford, in his cousin, Wedderburn of Kingennie's case with Scrimzeour. See TUTOR and PUPIL.

Fol. Dic. v. 1. p. 171. Fountainball, v. 1. p. 515.

SECT. V.

Whether Reduction be requisite of Decrees Arbitral;—Of Legal Instruments;—Of Inhibitions;—Of a Deed executed by a Woman *vestita viro*;—Of a Decree of Preference in a Multiplepointing.

No 21.

Found that no exception of iniquity, nullity, &c. can be proponed against a decree-arbitral; a reduction only being competent.

1540. February 11.

HAMILTON *against* HAMILTON.

NA exceptioun of iniquitie, nullitie, or uther quhatsumever, may be proponit or allegit contrare the executioun of ane decreete-arbitral lauchfullie given. But the proponer thair of sould use and allege the samin, be way of actioun, gif he pleisis, for reductioun and retractatioun of the said decreete.

Fol. Dic. v. 1. p. 171. Balfour, (ARBITRATION.) p. 415.

No 22.

A party producing an instrument of requisition, and the other party offering to prove directly the contrary of what was

1583. February.

EARL of CRAWFORD *against* OGILVIE.

THE Earl of Crawford warned Ogilvie of Beish to hear and see certain lands of, &c. to be lawfully redeemed, and consigned the soume of merks, together with ane letter of tack after the redemption of nineteen years, conform to the bond of reversion. The silver and the tack being produced before the Lords, it was *alleged*, That the tack was not the first tack that was consigned, but newly made and forged, and sua the first tack being uplifted after the con-

signation, made the redemption to be of no value, as likewise give the silver had been tane up again. It was *answered*, That albeit the said tack had been tane up again, now the same being presented before the Lords, *licet non idem fuit numero aut in judicio, tamen idem specie*; and so the party being no manner of way prejudged be that deed, the redemption ought to be found lawful. THE LORDS fand be interloquitor, that the production of the tack before the Lords albeit it was not *idem numero* was sufficient. The like being practised of before anent the procuratorie betwixt Mr Hepburn and the L. of Balbut. See REDEMPTION.

In the said action of redemption intended be the Earl of Crawford against Ogilvie, the consignation of the soume and tack being quarrelled, the Earl of Crawford produced ane instrument, subscribed be two notars, that he offered the silver and the tacks conform to the reversion to the party, providing he would renounce, and grant the lands to be lawfully redeemed. It was *alleged* be Ogilvie on the other part, that he offered him to prove, be authentic instruments under the subscription of the same notars, that he offered to take the silver and to renounce all right and title that he had to the lands, conform to the reversion in all points, *et sic fuerat instrumenta in vicem derogatoria*. It was found be the LORDS, that they wald not admit any probation be another instrument that was derogatory to the first, but gif they wald improve, they wald hear the party. *Vide Bald. in l. Scripturæ de fide instrumentorum, ubi tractatur de constitu: scripturarum.*

Fol. Dic. v. 1. p. 173. Colvil, MS. p. 253.

1628. July 25. STIRLING against PANTER and OGILVIE.

IN a reduction betwixt Stirling and Panter and Ogilvie, for reducing of an infestment, in respect of a preceding inhibition; the defender *alleging* the inhibition to be null, because the dwelling-place of the party prohibited to anailzie, whereat the inhibition was execute, was within a regality, where, conform to the 268th act 15 Parl. Ja. VI. the same should be execute at the head burgh of the regality; likeas, the same should be registrate in the registers of that regality, and this inhibition is neither execute, nor registrate there, but only at the market-cross of the head burgh of the sheriffdom, and registrate in the Sheriff-clerk's books; this allegiance was repelled, and the nullity fore-said was found, ought not to be received, by way of exception, but was reserved to the party, to be pursued by way of ordinary action of reduction, *prout de jure*. And thereafter, the defender *alleging* improbation of the inhibition, which being found relevant, the pursuer *alleged*, that seeing improbation was the last exception, which excluded the proponing of any other defence, therefore he *alleged*, that the defender could not thereafter be heard, to return to pursue any action of nullity against the writ. THE LORDS found, That notwithstanding the improbation, he might thereafter pursue the nullity, seeing

No 22.
therein inserted, and that by another instrument under the same notary's hand, the Lords refused to admit the same, and only reserved action of improbation.

No 23.
An inhibition being executed against a person living within a regality, not at the head burgh thereof, nor registered there, but at the head burgh of the shire, the Lords refused to receive the allegiance by way of exception; but reduction *prout de jure* was reserved to the party.