

The creditors *alleged* no process to annul their bonds and apprising *hoc ordine*, by way of declarator, but the pursuer must *via ordinaria* reduce; in which case the creditors will have terms granted them to produce the writs called for to be reduced; which privilege being in their favour, ought not to be taken from them in this extraordinary unformal way.—The Lords repelled the defence, and sustained the summons; in respect there was no bond craved to be produced, or simply reduced; but only that any bonds granted to the defenders since the tailzie are null, and all following thereupon, as to the lands in tailzie, which is no more than that they affect not the lands in the tailzie; and there is no necessity of reduction but where the writs must be produced before they can be reduced; and even in that case, if the pursuer satisfy the production himself, the defender hath no delay; and here the pursuer produces all that is necessary, and craves the rest to be declared null in consequence.

THE LORDS sustained the summons.

*Fal. Dic. v. 1. p. 174. Stair, v. 1. p. 85.*

1666. November 7. THOMAS CANHAM against JAMES ADAMSON.

JAMES ADAMSON having disposed a tenement to Joseph Johnston, who married his daughter, in conjunct fee, and the heirs betwixt them, which failing, to divide between their other heirs; in the disposition there was expressly this clause, providing that the said Joseph, and his foresaids, make payment to the said James Adamson, or any he shall name, the sum of L. 600, wherein, if he failzie, the said right and disposition shall expire *ipso facto*. In the infestment the former clause was repeated, but not the clause irritant. This Canham appries the land from Joseph Johnston, upon Joseph's debt, and being infest, did pursue James Adamson for removing, who, objecting the proviso, was notwithstanding decerned to remove. Now he pursues for the mails and duties during his occupation. James Adamson alleges that he ought to have the L. 600, because he had disposed with that provision. It was answered, This was but personal to pay, and could never oblige a singular successor; and all the pursuer could do was to proceed upon the clause irritant by way of declarator.

THE LORDS, in the end of the last session, having only seen the disposition containing the said clause, but not the infestment, repelled the defence, but reserved the declarator; but now having seen, that the proviso of payment was in the infestment, the cause being so favourable, a person disposing to his own daughter, and goodson, and the disponent yet in possession, they did, without multiplying further process, sustain it by exception.

*Fal. Dic. v. 1. p. 174. Stair, v. 1. p. 464.*

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A father having disposed a subject to his daughter under an irritancy; in this case, considered to be favourable for the disponent, the irritancy was allowed to be declared by exception.