

1635. February 11. MUIRE *against* MUIRE.

No. 21.

The Lord refused to sustain action at an apparent heir's instance reducing a disposition granted by his predecessor, unless the pursuer would enter heir, altho' thereby a passive title would be incurred.

In a reduction of a bond of alienation of a tenement in Glasgow, made by umquhile David Muire, in favours of Janet Muire his father's sister, at the instances of the apparent heirs of the said umquhile David, the Lords found, that this action of reduction, moved at the instance of the apparent heir, could not be sustained to reduce an heritable disposition of lands, made by the defunct, to whom the pursuers were neither heirs, nor had any other real right to the lands; and this action was not sustained at the pursuer's instance, as apparent heir to the defunct, maker of the disposition, upon that interest, as if they as apparent heirs, might crave reduction to that effect, that they by the discussing of this action, might know whether they might enter heirs or not to the defunct; for they ought to consider of their hazard themselves, and ought not to be suffered to pursue upon that interest, for that end.

Act. *Nicolson & Maxwell.*

Alt. *Stewart & Gilmore.*

Clerk, *Gibson.*

Durie, p. 754.

1635. July 3. JOHN HOWISON *against* JOHN STARK and SIR DAVID MURRAY.

No. 22.

A creditor has sufficient title to call for exhibition of writs, although he have not adjudged or been infeft.

John Howison being addebted to Patrick Gibson in 2000 merks, was obliged to infeft Patrick in an annualrent of 200 merks to be uplifted out of some tenements of his in Edinburgh. Thereafter these tenements were comprised from the said John, and the right thereof by progress established in the person of John Stark, who gave a back-bond to John Howison, that whenever he should pay to the said John Stark 8000 merks, that he should dispone back to him his own tenements. The said Patrick Gibson, as a creditor of John Howison's, craved exhibition of the said bond against the said John Stark, and Sir David Murray havers thereof, to the effect he might have transumpt thereof. Alledged, he had no right to call for exhibition thereof, except either he had comprised it, or gotten it adjudged. Replied, That ought to be repelled in respect of the pursuer's bond produced shewing him to be a creditor of the said John Howison, which furnisheth him sufficiently interest to call for exhibition of any evident conceived in his debtor's favours, to the effect that after the same is exhibited, he may comprise the right thereof; the Lords repelled the allegiance against the exhibition.

Spottiswood, (EXHIBITION) p. 125.

1635. December 12. ROWAN *against* WARDLAW.

No. 23.

A general service is a sufficient

Mr. David Wardlaw, having comprised from Rowan some lands, wherein Rowan was infeft, for debt owing to him by the said Rowan, and upon the said