Supplement ad Act 94.

When the production is closed, the ordinary before whom the Act is called, Makes great Inquisitum with the Reasons of Reduction: According to the date whereof the cause is put in the Inner house Roll of ordinary Actions to be Discussed in presence; unless the Lords, upon a bill, remitt to the ordinary in the Other House, to Discuss the Reasons extra, which Commonly done. The pursuer may if he think necessary, within Six days after the production is satisfyed and great Inquisitum made therewith, add or eik and give in in Writing any further Speciall Reasons of Reduction or Grounds of Relevator, Where be such a Conclusion, than those Contained in the Libel, To which the defender shall within six days thereafter give in his Answer in Writing. Till the expiring of which day allowed for giving in the Answers, the Reasons of Reduction cannot be discussed in the Inner House, nor any application be received for a Warrand to Discuss in the Other House act of Sessions 31 December 1725 §4.

formerly after calling the cause in order to discuss the Reasons of Reduction the defender was allowed to give his own production in the Clerks Hands, that he might be ready to dispute at the next calling: But this practice of giving the defender after calling to give his own production being justly thought a [illegible] of unnecessarily [illegible] nan discharged, Act of Sessions 31 December 1725 §4.

It is a Rule in all Reductions with us, when the pursuer fails to Decern, Infeft to be Restored from the time that the Disponer is supposed to know his right to be invalid, that is, from the Citation, if it was grossly Unjust; from sales Contes Lation Feb. 1672 Gray contra Watson upon Probable Ground and Reference to the Defender to Clear him from Fraud or Wrong, Double Price upon the Account of it mutually Depending upon Contingent proof: Therefore a Disposition being Reduced upon Act of Parliament 1621 Concerning Bankrupts, as Made to one partaker of the Fraud, the fruits and profits are to be Restored from the date of the Alienation: for Mala fide possessor Tenetur Restore all L. 3 C. de Condictione Furis. But if Reduction proceeded upon this ground, that the Deed quarrelled was granted without an Onerous cause to a Conjunct or Confident person in defraud of Lawful Creditors, the fruits can be required only from the date of the Citation. For a Disposition may be Made to a Conjunct person who neither knows that the Disponer was Insolvent or in Mala fides Cannot be inferred from fraud or Exertion. If it be a Disposition to a Creditor for payment of his debt, that is Reduced at the Instance of other Creditors, it would seem Reasonable that the Receiver should be liable to Account for the profits of the thing Disponed, only from the date of the Sentence, his case being more favourable than that of a Conjunct person acquiring without an Onerous Cause, quia Creditor fructus percepisse bona fide, and was Particeps Fraudis, he ought to Restore all the fruits during his possession.

The person sentenced whether bona or Mala fide possessor has Retention of his Necessary Expenses L. 5 C. de Rei Vindicatione. It is the opinion of some (Molinaeus de Longue tus. Paris. ii. 61 Glossa 5) that even after a right is Reduced, the person to whom it was made, may by way of action recover payment of what he Necessarily expended in Repairing the Lands or Tenements Disponed, Since that being a debt once due to him, can only be taken away by a Discharge. But according to the Civil Law, the Ameliorations may be Retained by way of Exception in the Rescissory Action, yet if the Defender Insist, his right to be Recovered without Refunding his expences and Meliorations, it is either Understood to have passed from him, or it is presumed that No thing is due to him upon that non L. 46 §. 1 de Rei Vindicatione. L. 33 §. de Condictione indebiti. And this would seem to hold also in our law, as being an Exception quasi Sepul Naturam Compensationis Competent and omitted, and to hold Relevable after Sentence. In the Reduction of a right to some Burgh Land, the person whose right was Reduced got No Satisfaction for what Expenses he Account to keep them in as good Condition as he got them, which were Sufficiently Compensated by his Enjoyment of the Lents; but was allowed Satisfaction for other Meliorations bestowed upon the Houses that would be profitable to the Lenders by Raising the Lents 16 January 1676 Binning contra Brotherstones.

The Effect of Reduction is Reciprocal. For as the pursuer only who is Relevied gets back what he gave, and Receives what he ought to be Restored to him either in principal or Interest and fruits: So ought he Interwise on his part to Restore what he got, that he may draw No other advantage from the Rescission, than the Bare effect of Entering again to his rights, and that the Adventure may be Reinstated again in his rights so far as the effect of the Rescission will permit L. 8 §. 1 ill. ff. ea quib. Caus. Maj. L. 24 §. pen. ff. de Minor. Thus a seller who procures the Contract of Sale of which he has Received the price to be Vacated, ought to give back the said price. But a Minor Relieved against a Sale made by him ought to Restore only so Much of the price of the Sale as is found to have turned to his Benefit by an Usefull application thereof. So that Rescission is Reciprocal or Holy according to the Justitia that may be due to