

Supplement d. l. 94.

When the production is closed, the ordinary before who the act is called, makes great Affidavits with the Reasons of Reduction: according to the date whereof, the cause is put in the Inner House Roll of ordinarie Actions to be Disputed in presence; unless the doct^r, upon a bill, remitt to the ordinarie in the Inner House, to Dispute the Reasons extra; which Commonly done. He purchases many of the usual necessary writs & days after the production is satisfied and great Affidavits made: these with add or ois and quic in in writing, with a few Special Reasons of Reduction or Ground of Declarator, there be such a Conclusion, than those Contained in the Act to which the Deforcer shall within the days thereof give in his answer in writing. Till the coming of a day allowed for giving in the answer, the Reasons of Reduction cannot be Disputed in the Inner House, nor any Application be received for a Warrant to Dispute in the Inner House del of Dec^r. 31 Decemb. 1725 & 4.

Formerly after calling the cause in order to discuss the Questions of Reduction the Deforcer was allowed to give his own production in the Courts Hands, but he might be ready to dispute at the next calling: But this practice gradually

the Deforcer after calling to give his own production being justly thought a way of unnecessary delay, was discharged, Act of Sedes 31 Decemb. 1725 & 4.

It is a Rule in all Reductions with us, when the pursuer waits to be any party to be Reduced from the time that the Deforcer is supposed to know his right to be treated, that is, from the date of it, was applied against, from also several cases, as 1662 Gray contra Walker, upon a Statute 14 Geo. 2. cap. 12. referred to the Dependents, both, and from the Statute 1711, 12. Doubtful upon the account of the nullity depending upon a printed proof. Therefore a Deposition being had upon an Act of Parliament, all concerning Bankrupts, as made to any partner of the firm, the fruits and profits are to be his from the date of the Statute: for that is *fructus proventus* Restore all l. 3. c. 2. Conditio cap. 10. But if the pursuer proceeded upon this ground, that the Debtor quomodo, rather than known to a Conjunct or Co-junct person in default of several Actions, the fruits can be required only from the date of the Actions: for a Deposition may be made to a Conjunct person who neither knew that the Deforcer was *fructus proventus* and that he could be required from him as Executor if it be a Deposition to a Creditor for payment of his debt, that is, assumed at the instance of other Creditors; it would seem Reasonably that the Debtor should be liable to account for the profits of the thing Disposed, only for the

The date of the sentence, this case being more favourable than that of a Conjunct person acquiring without an Overland Cause, *quasi solvatur fructus per eos* before Reduction. But if a Creditor do not receive payment, such was the *fructus proventus*, he ought to Restore all the fruits during his possession.

The person purchased whether bona or mala fidei possessor has Reduction of his necessary Expenses l. 5. c. 2. del. 1712. It is the opinion of some (Molendin & Gonsalves l. 1. c. 1. c. 2.) that even after a right is found, the person to whom it was made, may by way of action recover payment of what he necessarily expended in repairing his lands or houses, or in any other way, since that being a debt due to him, and not only so taken away by a Discharge. But according to the Statute, the person who has the right may be retained by way of Exception in the Reducing Action, yet if the Deforcer offers his right to be Reduced, without requiring his expenses and *fructus proventus*, he is understood to have passed from him, or it is supposed that no thing is due to him, upon that point, l. 4. c. 2. del. 1712. c. 3. l. 33. *fructus in deb.* And this would seem to hold also in our Law, as being an Exception qua Regal Notionam Compensati-onis Competent and Antientibus is not to be available after sentence. In this Reduction a right to some benefit, or what the person whose right was Reduced got the said person, or what Expenses he should to keep them in as good condition as he got them, which were sufficiently compensated by his Enjoyment of the benefit; but was allowed satisfaction for the Reductions bestowed upon the benefit that would be profitable to the Debtor by raising the benefit 16 Janu. 1716 by G. Binning, contra Brothelands.

The Effect of Reduction is Reciprocal. For as the party who is Reduced 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 likewise on his part to Restore what he got, that he may draw no other advantage from the Reduction, than the bare effect of Entering again to his rights; and that the Restorance may be Reinstated again in his rights so far as the effect of the Reduction will permit l. 3. c. 2. del. 1712. c. 1. c. 2. c. 3. c. 4. c. 5. c. 6. c. 7. c. 8. c. 9. c. 10. c. 11. c. 12. c. 13. c. 14. c. 15. c. 16. c. 17. c. 18. c. 19. c. 20. c. 21. c. 22. c. 23. c. 24. c. 25. c. 26. c. 27. c. 28. c. 29. c. 30. c. 31. c. 32. c. 33. c. 34. c. 35. c. 36. c. 37. c. 38. c. 39. c. 40. c. 41. c. 42. c. 43. c. 44. c. 45. c. 46. c. 47. c. 48. c. 49. c. 50. c. 51. c. 52. c. 53. c. 54. c. 55. c. 56. c. 57. c. 58. c. 59. c. 60. c. 61. c. 62. c. 63. c. 64. c. 65. c. 66. c. 67. c. 68. c. 69. c. 70. c. 71. c. 72. c. 73. c. 74. c. 75. c. 76. c. 77. c. 78. c. 79. c. 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