

1629. July 8.

KINROSS against DURIE,

No 27.

AN order of redemption being used conform to the reversion, and the party granter of the reversion having given a renunciation with consent of her curators, under form of instrument given out by the Clerk of Burntisland, where the tenement did lie, was sustained by the LORDS, notwithstanding of the act James VI. Parl. 6. cap. 80.

Auchinleck, MS. p. 182.

• • • Durie reports this case :

A TENEMENT in Burntisland being disposed by the father to his daughter, and she being seised therein, under reversion of a small sum to the father himself alienarily in his own life-time, which reversion was contained in the sasine given to her, which was the only right, containing the said disposition made by the father to her ; thereafter the father having redeemed from her, and she having granted the lands lawfully redeemed, and the reversion fulfilled, which renunciation was made also by her curators, she being then minor, and which renunciation was only subscribed by one notary for her, viz. the town-clerk, who was notary also to the sasine ; after which order of redemption and renunciation, the father disposes the lands to another, who thereafter disposes the same again to a third person, which third person, and his author, continues in possession of the lands for the space of 40 years unquarrelled ; the son of the daughter, who was infeft under reversion, as said is, claiming the benefit of his mother's infeftment, which he alleged now to be irredeemable to him, the reversion being personal, and the father being dead to whom it was granted, and the renunciation not being subscribed by two notaries before four witnesses, conform to the act of parliament 1579, whereby he alleged the same to be null ; it was found in a process of adjudication, pursued by the singular successor against the oye of the disponent, after he had renounced to be heir to him, being charged for that effect by his singular successor, wherein it was desired, that the right of that redemption and renunciation should be adjudged to him, and consequently that the lands should be found orderly redeemed, that both these conclusions might subsist, and might be craved in one summons, viz. that he might seek both the right to be adjudged to him, and also to have it declared that the lands were lawfully redeemed ; likeas, the LORDS sustained the pursuit, upon the said renunciation, albeit wanting the subscription of two notaries before four witnesses, as the act of Parliament proporteth, which act meets not this case, seeing 40 years were passed since the date of the said renunciation, during which space it was never quarrelled, and the party since then has been in perpetual possession, and it is subscribed by the town-clerk,

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who was notary to the parties sasine, containing the reversion; likeas there was an order of redemption used by the father, which albeit it was not so formal, in all circumstances, as it was prescribed by the reversion, yet the father thereby declared his mind, and the renunciation subsequent was either an approbation, or an acknowledgement thereof by the daughter; which all concurring, was found sufficient to sustain the renunciation, notwithstanding of the act of Parliament foresaid, against this party, who was heir to the mother, who had renounced.

Act. *Advocatus & Stuart.*Alt. *Nicolson, Mowat, & Russel.*Clerk, *Gibson.**Durie, p. 453.*1629. *December 17.*LORD CARNOUSSIES *against FRASER.*

No 28.

IN orders of redemption no necessity to warn the tutors and curators of the minor generally; and it is sufficient to warn one who is holden as tutor, and there is no necessity to prove him tutor.

Kerse, MS, fol. 85.

*** Auchinleck reports this case :

IN a declarator of redemption, he from whom the reversion is comprised, needs not to be summoned.

*Auchinleck, MS. p. 183.**** Durie's report of this case is No 12. p. 2181. *voce* CITATION.1630. *February 6.*MUIR *against* MUIR.

No 29.

WILLIAM MUIR having disposed to his two sons, George and Robert, two tenements redeemable upon payment of 10s. by himself, in his own time, to his said sons; thereafter, one of his sons being dead, he used an order; which the LORDS sustained as well against the heirs that was dead, as the other son alive, notwithstanding that the reversion bore, only redeemable from his sons, but not their heirs.

*Spottiswood, p. 265.**** Durie and Auchinleck's reports of this case are No 5. p. 3684. *voce* EXECUTION.