No 6.

as validly assigned to the compriser, as if the creditor had assigned the same to him, *quō casu* upon that assignation he might have raised summary charges of horning, the cedent and all the parties being yet living, even so the compriser might do the same. See No 4. p. 208. *voce* ADJUDICATION.

Act. *Stuart*. Alt. ——. Clerk, *Hay*.

Fol. Dic. v. 2. *p.* 73. *Durie*, *p.* 763.

1662. *January* 9. EARL of MURRAY *against* LAIRD of GRANT.

No 7.
Heirs found to have the benefit of an obligation to re-dispone lands, altho' heirs were not expressed, but appeared to have been omitted by negligence.

THE Earl of Murray pursues the Laird of Grant, to re-dispone him certain lands, which the Earl's father had disponed to the defender; and had taken his back-bond, that if the Earl's friends should find it prejudicial to the Earl, then upon payment of 2800 merks, precisely at Whitsunday, he should re-dispone; *ita est*, the Earl's friends, by a testificate produced, found the bargain to his loss; therefore he offered the sum to the defender, in his own house, which he refused; and now offers to re-produce it, *cum omni causa*. The defender *alleged*, Absolvitor; first, Because the back-bond is *pactum de retro vendendo*, and so a reversion, which is *strictissimi juris*, and not to be extended beyond the express terms thereof; which are, that if James Earl of Murray should repay the sum at Whitsunday 1653 precisely, the defender should re-dispone; but there is no mention of the Earl's heirs, and so cannot extend to this Earl, though he were heir, as he was not served heir the time of the offer. The pursuer *answered*, That when reversions are meant to be personal, and not to be extended to heirs, they do bear, 'That if the reverser in his own time, 'or at any time during his life,' &c. or some such expression; but there is nothing such here; and the pursuer was retoured heir to his father, who died shortly before the term of redemption; and having used all diligence, he cannot be excluded by such an accident, which he could not help.

THE LORDS repelled both the defences, albeit there was only an offer, without consignation; seeing the back-bond did not bear premonition, or consignation, but only payment, which the pursuer now offered.

Fol. Dic. v. 2. *p.* 72. *Stair*, v. 1. *p.* 77.

*** Gilmour reports this case:

1662. *January* 7.—THE deceast Earl of Murray feus a piece of land to the Laird of Grant *anno* 1653, and Grant gives a back-bond, that if the Earl should by advice think fit rather to have back the feu, than that Grant should bruik it, he is obliged to denude himself, the Earl always paying the money at Whitsunday thereafter. The Earl dies before Whitsunday; and this Earl, his son, within five or six days before his service as heir, offers the money to Grant, by

No 7.

way of instrument, and pursues him to denude himself. It was *alleged*, That the bond was only personal, in favours of the late Earl, and not of his heirs, and is *strtcti juris*; and that this Earl was not heir the time of the offer, nor did he consign the money. It was *answered*, That the right to the bond is transmissible to the heir, seeing he says not, that if the Earl being on life, should pay, &c.; and so he is obliged to denude himself, in favours of the Earl's heirs or assignees: That this Earl, the time of the offer, was apparent heir, and within fifteen days thereafter retoured: And the offer was sufficient, seeing the bond provided not the consignation of the money, being as sure in the Earl's hands as any others.

THE LORDS repelled the allegeance.

Gilmour, No 13. *p.* 12.

1669. *July* 14.

ARTHUR FORBES and PATRICK LEITH *against* EARL MARSHALL.

No 8.
If an heiress dispone her right to her husband or any for his behoof during minority, there being no contract of marriage or renunciation, her heir may reduce upon minority and lesion.

THE lands of Troup being disponed to a second brother of the house to be held of the Earls of Marshall, Gilbert Keith having but one daughter, did tailzie the lands to the Earl, failing of heirs-male of his own body; but did burden the same with the sum of 10,000 merks payable to his daughter, for which he gave her a wadset. The daughter being but 14 years of age, was taken away and married by one John Forbes, without any contract of marriage, and died within a year thereafter; but before her death, with consent of her husband, did dispone the said wadset in favours of William Forbes her husband's brother, without making mention of any contract of marriage, or any conjunct fee made by the husband; only he alleged, that he had a back-bond from his brother, but could not produce the same; whereupon there being mutual reductions intented, one at the instance of Arthur Forbes as assignee, made by John Leith against the Earl of Marshall and the Laird of Lesmore, to whom he had disponed the lands of Troup, and another against Leith and Forbes, at the instance of the Earl of Marshall as assignee, made by the heir to Troup's daughter, for reducing the right made by her to her husband, upon minority and lesion;

THE LORDS did reduce the right made by the daughter, not only because there was no back-bond produced to verify that it was in effect made in favour of her own husband; but most were of opinion, that albeit it had been made directly to her husband, yet it being without any remuneration, or by way of contract, it was null, and to be reduced *ex capite minorennitatis et læsionis*; specially she having been carried away without consent, as said is.

In this process it was likewise found, that a reduction being intented at the instance of the heir, as having interest to pursue a reduction of the disposition, as done to his enorm hurt and lesion, albeit it was blank, and the reasons not filled