

No 43.

1665. *January 19.*STEWART *against* STEWART.

AN infeftment of annualrent was found loosed, so as to go to executors upon a requisition by the creditor, though the procuratory was not produced at the time of the requisition, the same not having been called for, and the defunct having homologated the order, by raising horning upon it.

Fol. Dic. v. 2. p. 322. Stair. Newbyth.

* * * This case is No 136. p. 5587, *voce* HERITABLE and MOVEABLE.

1667. *January 2.*JAMES HOGE in Edinburgh *against* JAMES HOGE in Dalkeith.

No 44.
Redemption sustained upon consignation of a liquid debt due by the wadsetter to the reverser.

JAMES HOGE in Edinburgh pursues a declarator of redemption against James Hoge in Dalkeith, who *alleged* absolvitor, because the whole sum contained in the reversion was not consigned. It was *answered*, There was consigned the equivalent, viz. a decret against the defender for a liquid sum which behoved to compensate. It was *answered*, That reversions being *strictissimi juris*, compensations are not to be admitted therein; otherwise wadsetters may be much prejudged by taking assignations from their creditors, and consigning the same and frustrating them of their monies which they had designed for other creditors and other uses. It was *answered*, That this was no extrinsic compensation, but a decret founded upon an article contained in the contract of wadset;

Upon which consideration the LORDS sustained the order and declared.

Fol. Dic. v. 2. p. 325. Stair, v. 1. p. 419.

* * * Newbyth reports this case :

1667. *January 12.*—JAMES HOGE in Dalkeith having, *in anno* 1653, given a proper wadset of his house in Edinburgh, to James Hoge in Edinburgh, under reversion of 3000 merks; the said James Hoge in Edinburgh, by the said contract of wadset, is obliged to pay to the said Hoge in Dalkeith L. 100 yearly, in regard the rent of his house was better than the annualrent of 3000 merks; and in regard the said James Hoge in Edinburgh made no payment of the said L. 100 yearly from the date of the contract to Whitsunday 1663; therefore the said James Hoge in Dalkeith obtained decret against him for payment thereof; and at Whitsunday last pursues an order of redemption against the said James Hoge in Edinburgh, and consigns the foresaid decret and discharge thereof, with the superplus of the money that remained unpaid of the 3000 merks; and now pursues a declarator for the order of redemption.

THE LORDS sustained the order of redemption, bearing the consignment of the decret *pro tanto*; albeit it was *alleged*, That the order could not be sustained unless the whole money had been actually consigned conform to the contract; which the LORDS found not needful in this case, the decret being for the superplus of the mails of the wadset lands more than paid the annualrent of the money and so is accessory to the wadset and redemption.

No 44.

Newbyth, MS. p. 89.

1667. February 1.

CREDITORS of Sir JAMES MURRAY against JAMES MURRAY.

THERE being a wadset of the lands of Stirling granted by Sir James Murray to James Livingston of the bed-chamber, containing a clause of requisition and reversion, on payment at London; the lands being appraised by Sir James's Creditors, they having the right of reversion, did use an order at Edinburgh against James Murray, as now having a right to the wadset, and pursue a declarator. The defender *alleged* absolutor, because the order is not conform to the reversion, which is *strictissimi juris*, and behoved to be done at London. It was *answered*, The place being adjected in favour of James Livingston who resided at London; the pursuers have done more, having consigned at the present wadsetter's domicile, London being only appointed, as it was the former wadsetter's domicile, wherein he hath benefit, and can have no detriment. It was *answered*, He was not obliged to debate his detriment, for if his money were in London, he would get six of the hundredth of exchange to Scotland.

THE LORDS sustained the order, the pursuers making up what should be modified by the Lords, for the interest of the wadsetters.

Fol. Dic. v. 2. p. 325. Stair, v. 1. p. 432.

* * * Newbyth reports this case :

THERE being a contract betwixt Sir James Murray and James Livingston of the bed-chamber, whereby the said James Murray wadset to the said James Livingston, the lands of Skirling, redeemable for the sum of L. 2000 Sterling; Mr Andrew Oswald and remanent Creditors of Sir James Murray having comprised the said lands, and used an order of redemption and intended declarator, concluding count and reckoning upon the act of Parliament, which is first craved before declarator of redemption; which cause being called, it was *alleged* for the defender, (denying always any such reversion), That the defenders cannot be obliged to count, because any order of redemption used, and consignment, was to have been at London in the hands of the chamberlain at London; and the order and consignment made by the pursuer was here at Edinburgh, as said is. To which it was *replied*, That albeit in the reversion granted by Mr Livingston, it was ex-

No 45.

A reversion bearing payment at the wadsetter's house in London, satisfied by consignment at Edinburgh where his successor dwelt.