&c. and here the pursuer's disposition, containing or importing an assignation to the reversion of the barony, is prior to this offer; likeas the defender knew his right, and had treated with him for the wadset. The defender replied, That though the act of Parliament bears not expressly "the production of rights derived from the debtor," yet it is necessary by the common law, or otherwise a wadsetter behoved to cede his possession at the requisition of any man pretending right; and though the defender had notice of the pursuer's right by hearsay, and had treated with him on that supposition, *non relevat*, seeing he never saw it, before the offer, nor had he any sasine then registered, nor assignation to the reversion registered. No. 23.

The Lords sustained both the defences, and assoilzied.

Stair, *v.* 2. *p.* 699.

1681. *December* 20. AIRDOCH *against* WILLIAM PATON.

No. 24.
Wadsetters may acquire the right of reversion without communication.

Dr. Paton having a wadset of the lands of Panholls from one Grahame, redeemable upon payment of 14,000 merks, and, in case of not-redemption at Whitsunday 1657, the wadset was to expire upon the Doctor's paying in 5500 merks to Grahame, which was declared to be the full worth of the reversion. *In anno* 1659, he disponed the lands irredeemably in trust to Airdoch, his brother-in-law. The act debtor and creditor 1661, prorogated the legal of wadsets for the space of five years. After Airdoch's death, his son and his tutors, before they denuded of the trust, acquired the right of Grahame's reversion, who had used an order *debito tempore*, and insisted in the redemption of the wadset.

Alleged for Dr. Paton's heir: That it was *contra bonam fidem* to acquire the reversion in prejudice of the exuberant trust granted to Airdoch his uncle; and the Lords found, that a gift of forfeiture acquired by the pursuer could only be effectual to him for what he paid for it in respect of the trust; and *a pari* no more can be required for the reversion; *2do*, *Esto* there had been no trust, the warrandice could only subsist for damage and interest, which can only be extended to what was paid for the reversion, and that Paton was willing to allow to Airdoch; *3tio*, The contract with Grahame containing a liquidation of the reversion, as the full price thereof, the failzie to redeem at Whitsunday 1657 was not purgeable; for this was not the case of *pactum legis commissoriæ*, but a vendition of the reversion for a further sum than the wadset was granted for. As to my Lord Tullibardine's case, there was a wadset *ab initio*; and the paying in a further price for the reversion was in a posterior deed, wherefore the Lords found the not-redemption purgeable; whereas here the liquidation of the reversion in the first contract, made it debord from a regular wadset, and resolve in a vendition, with a conventional retraction.

No. 24. The Lords thought not the difference material betwixt a reversion liquidated in the first contract, and one liquidated by a posterior deed; nor did they determine singly upon the point of trust, which was narrow, to continue the effect thereof in the person of the heir who acquired the reversion, the trust being personal *quoad fidem et diligentiam;* but also determined upon the general head of damage above urged, as if there had been no trust, and waved other points; but the Lords found, That wadsetters might acquire the right of reversion without communication. But here the heritable right was disponed irredeemably.

Harcarse, No. 1021. *p.* 290.

1681. *December* 21. HUME of Eccles *against* JEAN HUME.

No. 25.

Found, That a party who had a tack of parsonage teinds might acquire the right of the annuities from my Lord Loudoun without communication, the teinds not being set free of that legal imposition and burden.

Harcarse, No. 1022. *p.* 291.

1682. *January* 18. TRAQUAIR *against* SOUTHESK.

No. 26.
What rental to be the rule of accounting?

The Earl of Traquair having granted to the Earl of Southesk an infeftment of security in several lands for a great sum, containing an assignation to the rents, and power to enter to possession and uplift, upon being countable for his intromission over and above the annual-rent of the money, the Earl of Southesk was called to account; but the rental not being condescended on in the contract, the Lady Traquair produced a rental under the hand of one Burnet, factor to Southesk, the first year of his entry, of £10,296, another in the year 1659, under Southesk's hand, for £10,333, and other three rentals signed by Southesk to chamberlains, viz. one in the year 1674, for £6500, another in the year 1675, for £6900, and a third in the year 1676, for £8700. The question was, If the first rental should be the rule for all the years since Southesk's entry to possession, as in the case of apprisers, in regard, by the nature of the contract, he was liable to intromit from his entry?

The Lords found the first rental should be the rule till the year 1659, and the second rental of that year should be the rule till the year 1674, and the next three rentals for the respective years 1674, 1675, 1676; and that the last rental in the year 1676 should be the rule in all time thereafter, unless Southesk could instruct a reason for abating of the rental. The speciality in this case was, That the lands were grass-rooms, that are not let in tack, but from year to year, so that the rent was subject to variation.

Harcarse, No. 1023. *p.* 291.