

No 59. informalities, allowed the Ordinary to hear the parties, on whom the loss of the annualrent since the consignation should fall.

Fol. Dic. v. 2. p. 323. Fountainhall, v. 1. p. 806.

1698. January 5.

JAMES WATSON, and JAMES NICOLSON of Trabroun, late Dean of Guild of Edinburgh, against IRVINE of Drum.

No 60.
Who must be
premonished.

MERSINGTON reported James Watson, printer, and James Nicolson of Trabroun, late Dean of Guild of Edinburgh, against Irvine of Drum. There was a wadset of the lands of Balskevie, granted by Drum to Forbes of Tilliegreig, which, by progress, comes to Watson the printer, who is infest therein base, in 1677, and inhibits Forbes, his author, on the warrandice of his disposition, in 1678. After this, Drum enters into a transaction with Forbes, and obtains his renunciation of the wadset, which is duly registered. Watson pursuing on his right, Drum defends, that the wadset is extinct by the renunciation given him by Forbes Watson's author. *Answered*, No respect thereto, because long posterior, not only to my infestment, but likewise to my inhibition against Watson. *Replied*, Neither of these could put Drum, the reverser, *in mala fide*; for, *imo*, The sasine on the wadset, in Wason's person, was base, and never clad with possession; and for the inhibition, it was not intimated to Drum in terms of the act of sederunt 1680; and so there was nothing to hinder Drum, the reverser, to take a renunciation from Forbes, the first wadsetter, in 1686, being six years after the act of sederunt was made. *Duplied*, Watson could not obtain the possession, because his author's relict, liferenting the lands, debarred him; but this was sufficient to clothe his right with possession, seeing he bruiked *per usufructuariam*. See 13th February 1624, Sinclair *contra* Sinclair, *voce* SOLIDUM ET PRO RATA; and 2d July 1624, Hamilton *contra* Tenants, See APPENDIX. *Triplied*, The liferentrix's possession could never clothe Watson's right, with possession; for that were to induce a *fictio fictionis*, which law reprobates; for, *imo*, Her possession behoved to be construed the fiar's possession, and then the fiar's possession must be extended to be Watson's, his assignees possession, which were a double fiction. THE LORDS considered the reverser paid the money, redeemed his own lands, and accepted the renunciation, by virtue of obligations long prior to the inhibition, and so was not concerned therein, nor any way *in mala fide*, unless the method of the act of sederunt had been followed by the wadsetter's creditors intimating his inhibition to the reverser, that he should not pay nor redemption till he were called; and therefore found Drum was not *in mala fide*, neither by the inhibition, nor sasine, neither of which he was obliged to take notice of, though the liferentrix possessed; and for these reasons sustained the renunciation. And the Lords have oft found base infestments granted by wadsetters do not hinder redemption, 28th November 1635, the Relict of Mowat against

REDEMPTION.

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Gray, *voce* WADSET; and 27th July 1665, Hamilton against Tenants, *IBIDEM*; yet Derric has a case, where a right was sustained, notwithstanding of a redemption, 5th March 1630, Campbell and Orr against Salmond, *See* APPENDIX, in the case of a gratuitous disposition to a daughter, redeemable on a 40 shilling piece.

No 60.

Fol. Dic. v. 2. p. 325. Fountainhall, v. 1. p. 808.

1702. December 17. OGILVIE against STORMONTS.

No 61.

CONSIGNATION the day after the term fixed in the heritable bond, found ineffectual, though the term fell upon a Sunday; for the Lords thought, that the consignation should rather be the day before than the day after.

An heritable bond being taken to a man in life-rent, and to his son in fee, containing a clause of reversion upon premonition, &c. and empowering not only the heir but the life-renter to require; an order of redemption and consignation of the money found null, because premonition was only made to the heir, requiring him to acquaint the life-renter.

Fol. Dic. v. 2. p. 324.

* * This case is No 28. p. 8264, *voce* LIFE-RENTER.

1711. November 13.

WILLIAM DOUGLAS of Dornock against WILLIAM CARRUTHERS of Nutholme.

No 62.

WILLIAM DOUGLAS of Dornock, who acquired the reversion of a wadset of the lands of Nutholme, granted by Maxwell of Castlemilk to William Carruthers, raised a reduction and improbation of William Carruthers's right, and, while his title to the reversion was lying in the hands of William Carruthers's lawyers, given out to be seen in that process, used an order of redemption against Carruthers; and thereafter used a new order, wherein he produced his right to the reversion. When Dornock came to insist in a declarator of redemption, the defender *alleged*, That no declarator could proceed upon the first order, because Dornock was a singular successor to the reversion, and his title not produced either in the instrument of requisition or consignation.

An order of redemption, made by a singular successor to the reversion, without producing his title at the using of the order, not sustained, although the papers were at the time in the hands of the wadsetter's lawyers, in another process before the Lords.

Replied for the pursuer, *imo*, No law requires the user of an order of redemption to produce his title, which the wadsetter should not controvert, more than a tacksmán or vassal can controvert their superior or constituent's right; February 19. 1674, Lord Berthwick against Pringle, No 51. p. 13473.; for in