short of the then legal interest of 400 merks, and therefore cannot properly be considered as part of the wadset itself. But allowing it to be such, nothing can be clearer than that the wadsetter was to run all the risk of the rise and fall of the rent of the land itself, as in place of the other twenty merks; and hence it was, that the whole right was declared to be redeemable upon payment or consignation of the 400 merks, and what of the annuals of the annual-rent right were owing; from which, therefore, it is evident, that, though the rents of the lands had proved ever so deficient for making up the other twenty merks, the wadsetter could not recur upon the reverser to make up that deficiency; for this plain reason, that the risk of these lay upon the wadsetter. If they rose to more than twenty merks, the profit would be his; if they fell short of that sum, his would be the loss. No. 43.

It was thought by some of the Judges, that, from the time interest was, by the operation of law, reduced to five *per cent.* it became an improper wadset; but, by most of the Judges it was viewed in this light, that Taillabout was given as a wadset for the one half of the sum borrowed, and the other half secured by a right of annual-rent. It was plainly a proper wadset, and it was impossible to conceive that the bringing down of annual-rent could alter the nature of the right; and, in later times, the defender had only possessed the bit of the wadset, and deserted the other, which was dropped by the convention of parties.

"The Lords found that this was a proper wadset."

Act. *Ilay Campbell.* Alt. *Maclaurin.* Clerk, *Kirkpatrick.* Reporter, *Stonefield.*

Fac. Coll. No. 199. *p.* 135.

1777. *January* 22. AYTON and KEIR *against* VEITCH.

No. 44.
An improper wadset may, by acts and deeds of the wadsetter, be converted into a proper one.

Keir conveyed his lands of Bardrum in wadset to Veitch, redeemable within 20 years, on payment of 27,000 merks, Veitch at the same time granting a tack of the lands of Keir during the period of redemption for a rent corresponding to the interest of the wadset sum. Keir possessed the lands for some years till his death, when his children declining to represent him, Veitch obtained warrant from the Sheriff, to let the lands, which he accordingly did, though not at a public roup, yet for the highest rent that could be obtained for them. After all, however there was a deficiency in the rent of about £20 Sterling less than that contained in the backtack to Keir, and therefore an annual short coming of the interest of the wadset sum to that amount.

Ayton having purchased the right of reversion from the grandson and representative of the original reverser, consigned the redemption money; and he, together with David Keir his author, brought action of declarator of redemption against the representative of Veitch, who refused to comply with the order of redemption, till the sums in which the rents had fallen short of the interest should be consigned with the redemption money.

No. 44.

Pleaded for the pursuers, that as the terms of reversion had no reference to this back-bond, these clauses cannot affect an onerous purchaser of the right of reversion; neither can they affect his author, for Veitch, by assuming full possession on the reverser's death, and letting the lands as proprietor, must be considered as a proper wadsetter, taking his chance of the rents for his interest. It is of no consequence that the wadset was originally an improper one, in consequence of the back-tack to the reverser; for the subsequent assumed possession by the wadsetter, and his letting the lands without any protest, to show that he did not mean thereby to hold the back-tack as voided, clearly converted the wadset into a proper one, so that there can be no claim now for short coming of interest.

The Lords found that the conduct of the wadsetter, in letting the lands for a term of years, not by public roup, and in taking no protest, was virtually passing from the back-tack granted to the original reverser, and that the wadset thereby became improper; and therefore assoilzied both the pursuers from the defender's claims, and decerned in the declarator of redemption. See APPENDIX.

Fol. Dic. v. 4. p. 397.

1786. *March* 10. NEIL CAMPBELL *against* PATRICK CAMPBELL.

No. 45.
A reverser may insist in a declarator of redemption, notwithstanding an order for redeeming voluntarily has been agreed on.

The lands of Balligown had been granted in wadset to James Campbell and his wife; whom failing, to the heir of James Campbell; redeemable at the first term of Candlemas after the decease of the original wadsetters, or at the end of every nine or nineteen years thereafter.

The order of redemption prescribed was,—by premonishing the wadsetter sixty days before the term,—by an offer of the money at a particular parish-church,—or, in case of the wadsetter's not appearing to receive the wadset-sums, by consignation in the hands of certain persons.

An opportunity of recovering the lands having occurred by the death of the original wadsetters, Neil Campbell, the reverser, executed, for this purpose, a summons against Patrick Campbell, who had succeeded to the wadset-right. After reciting the conditions of the bargain, as before stated, it concluded, that the citation of the wadsetter should be held equivalent to premonition; an offer of the wadset-sums at the bar of the Court of Session, to consignation; and that these things being so done, the lands should be declared redeemed, &c.

Pleaded in defence: In the redemption of lands, the method agreed on by the parties should be exactly pursued. Hence it has been understood by all our lawyers, that the voluntary and extrajudicial form of redeeming ought to be tried before resorting to that which is litigious and compulsatory; the latter being only calculated to carry into effect, by authority of law, a right which has been before fully perfected, act 1592, C. 136; Craig, Lib. 2. Dieg. 6. p. 164,—168; Spottiswoode, *voce* Redemption; Balfour, p. 445, 447, 453. 458; 15th June 1556, John Sempill against Houston; 15th Februaary 1562, Laird of Kinnaird, (See APPENDIX); Stair, B. 2. Tit. 10. § 16, 19; Bankton, Lib 2. Tit. 10. § 24; Erskine, B. 2. Tit. 8. § 17.