

13456

REDEMPTION.

No 30.

the money was alleged to have been consigned, being but the assertion of a notary.

*Auchinleck, MS. p. 180.*

\*\*\* Durie's report of this part of the case is No 49. p. 10117. *voce* PERICULUM.

1630. July 9.

FISHER *against* BROWN.

THERE is no necessity to make premonition to any, but to the heritable possessor, without regard to what hands the land anailzied has gone.

*Fol. Dic. v. 2. p. 324. Spottiswood. Durie.*

\*\*\* This case is No 56. p. 2204. *voce* CITATION.

1630. December 30.

HUNTER *against* HARDIE.

No 31.  
In a declarator of redemption of a wadset, no personal right will operate against a singular successor to the wadsetter.

ONE Hunter being infest in the lands of Hags by L. of Spottiswood, which L. of Spottiswood had long before given an heritable infestment of his quarter of the said lands to Hardie, and Hardie at the same time having granted back to Spottiswood a reversion, making mention, that whereas he had that same day received heritable infestment from him, of his four merk land of Hags, (for so designed the reversion the lands, albeit his infestment designed the alienation, to be of his quarter of the lands of Hags,) yet he granted the four merk land to be redeemable, by payment of a sum, and a 15 years tack of the land after the redemption; according to which reversion, Thomas Hunter using the order, and pursuing redemption, and consigning a tack of the four merk land of Hags; the defender *alleged*, That this redemption could not extend but to a four merk land, and could not be effectual to redeem the whole quarter land, as the pursuer craved in his order and summons of redemption, but only for a merk land; seeing he was infest in a whole quarter, which consisted of a seven merk land and a half, and the reversion, which he gave back, was but only of a four merk land. Notwithstanding of the allegiance, the LORDS found, that the reversion extended to all which was contained in the charter; for albeit the charter was of the whole quarter, and the reversion designed only for the four merk land, yet being done all at one time, in one day, and before the same witnesses; and the reversion making mention, that for somuch as he had obtained then instantly an heritable charter, and right of the four merk land, there being no other charter, nor right but the *alleged*, wherein it was called a quarter, the LORDS found, That the reversion extended to all which was disposed, and so to the whole quarter. And whereas the tack consigned by the pursuer bore, a tack of the four merk lands, according to the words of the reversion, the LORDS found

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nevertheless, That this tack should not extend to the whole quarter, but only to so much of the quarter of that land, as was possessed by him the time of the acquiring of that heritable right and sasine, and not to any more of the land, seeing the defender bruiked only a three merk land and a half of that quarter, and the other four merk land was bruiked synsine by other two tenants, nor never paid duty to him. THE LORDS found, That this tack should extend to be a tack of that which he possessed, viz. whereby to bruik the three merk land and an half, and no more; and so by this decision, albeit the reversion be to redeem the four merk land, and the heritable right was of the whole quarter, and that the quarter consisted of a seven merk and half merk land; and that the reversion appointed a tack to be given of the four merk land; yet because the defender possessed only three merk and an half of that quarter, and had no possession of the rest; it was found, that the wadset extended, and was effectual for no more than that proportion which he possessed then, and continually synsine; and the tack should comprehend no more, notwithstanding of any thing contained in the reversion and wadset; albeit also the other tenants had a contract of the pursuer's author, whereby they bruiked the rest of the quarter, viz. the other four merk land, and which being personal, defended not against the pursuer, who was a singular successor, and which right of theirs, and possession, this defender present also allowed to them.

No 31.

Act. Baird.

Alt. Hart.

Clerk, Hay.

*Durie, p. 547.*

1631. February 12.

MURRAY against LORD YESTER.

DAVID MURRAY having acquired the heritable right of the lands of Drumelzier, from the Laird of Drumelzier, and being made assignee by him to all the legal reversions of any comprisings, of any of the lands of the said barony of Drumelzier, deduced either by the Lord Yester's self, or any other creditors, pursues the Lord Yester to hear the lands redeemed from him, not only for the comprising at the Lord Yester's own instance, but also for all other comprisings deduced by whatsoever other creditor, the right whereof is become in the person of the Lord Yester, by assignation, or other right made thereof to him, by the comprisers of their rights; which summons being so generally libelled and conceived, and not bearing the names of the persons creditors specially who had comprised, nor yet the special sums, for which these creditors had comprised, but only that the pursuer had consignèd such a special sum, whereto he affirmed the whole comprising did extend, and if the same did extend to any greater sum, that he was content instantly to consign and pay the same, they being condescended on, and instructed by the Lord Yester; and it being alleged that such a redemption ought not to be sustained, and that the defender could not in law be compelled to instruct the pursuer to libel a pursuit against himself;

No 32:

An heritor offered to redeem not only the comprising held by a particular creditor, but generally all other comprisings. This offer, although not specific, was sustained.