

WADSET.

16519

The act anent annual-rents 1621 not extended to wadsets with back tacks, but the same found to stand valid as they were made, specially being before the act 1621.

No. 6.

Kerse MS. f. 56.

1621. *March 10.*

KINROSE *against* DURIE.

No. 7.

The Lords found, that a singular successor infest by resignation, could not have right to a reversion where the wadset was proved to be holden of the superior and confirmed, or by resignation, except the party to whom the reversion was granted, was released after the order of redemption.

Kerse MS. f. 84.

1623. *July 11.*

LA. of PITSLIGO *against* LA. of MITCHEL.

No. 8.

The Lords found a renunciation of a wadset good being made by an assignee, albeit not infest; in respect the assignation gave him power to renounce, which the Lords found sufficient *inter vivos* as long as the cedent lives.

Kerse MS. f. 84.

1629. *December 17.*

CARNOUSIE *against* FRASER.

No. 9.

In orders of redemption, no necessity to cite tutors and curators generally. It is sufficient to cite one reputed to be tutor. He from whom the reversion is comprised need not be cited.

Kerse. Auchinleck.

* * This case is No. 28. p. 13454. *voce* REDEMPTION.

1635. *November 28.*

The RELICT of MOWAT *against* GRAY and MOWAT.

No. 10.

One Keith of Pittindrum having wadset the lands of ——— to one Mowat, redeemable conform to the reversion granted thereupon, for 2,000 merks, and by virtue whereof he being in possession; thereafter this Mowat, by a base infestment, gives the life-rent right thereof to his wife, to be holden of himself, and making relation to be done for implement of, and conform to their contract of marriage; after which right the said Mowat disposes the same lands to Mr. Rodger Mowat, who was his creditor, and had paid great debt for him, by a public infestment, who sicklike was divers years in possession by virtue of the said public right: Thereafter Keith of Pittindrum disposes the said lands to the Earl Marshall, and pays the sum to the said Mr. Roger Mowat, who had the foresaid

Competition between the relict of a wadsetter, and a singular successor.

No. 10. public right of the wadset redeemable, as said is, conform to the reversion, and obtains a voluntary renunciation of the said right, no order of redemption being ever used thereupon; and thereafter the Earl Marshal, and William Gray, to whom the Earl disposed the lands irredeemably, became in possession after the decease of ——— Mowat, his relict, by virtue of her preceding base right, claiming and pursuing, for the mails and duties of the lands; and a defence being proponed upon the renunciation made by the said Mr. Rodger, successor in her husband's public right, which was under reversion, and which she had confessed to be redeemed by his receipt of the money, and renunciation of the wadset, in favours of the heritor; which was lawful for him to do, seeing the heritor could know no other but his own wadsetter, he not having received, nor acknowledged the wife, by virtue of her base right; so that as the heritor might have paid the husband the money, and received his renunciation valuably, *quo casu* the wife's right would have ceased, so might he do to the singular successor; and the wife answering, that her infestment being given, conform to a contract of marriage, her husband's possession behoved to be esteemed her possession, and this voluntary renunciation ought not to derogate to her right, except there had been an order of redemption used, and she warned to the order and declarator, that the money, instead of the land, might have been employed to her use;—the Lords sustained the exception, upon the preceding voluntary renunciation and reversion, and preferred the singular successor to the relict, in respect thereof and of his possession.

Act. Baird.

Alt. Mowat.

Durie, p. 779.

1662. January 29.

LAIRD OF LAMINGTON *against* SIR JOHN CHIESLY.

No. 11:

A wadsetter found liable to account for the surplus above his annual-rent, notwithstanding a stipulation to the contrary.

The Laird of Lamington pursues Sir John Chiesly, upon the late act of Parliament 1661, betwixt debtor and creditor, to restrict a proper wadset, granted by Lamington to him, of the lands of Symington, to his annual-rent. The defender excepted upon a back-bond granted by Lamington, whereby he expressly renounced the benefit of the usurper's act, betwixt debtor and creditor, and all such acts, made or to be made; and obliged himself, upon honour and conscience, not to prejudice Sir John of his bargain, to which no subsequent law could derogate, unless it had been specially, notwithstanding any such paction; *2dly*, The foresaid act has an express exception, that where such acts, made and to be made, are renounced, the benefit of that act shall not be competent to such. The pursuer answered to the *first*, That pactions, or renunciation of parties, cannot operate against a posterior law; *2dly*, The pursuit here is, for restricting of a wadset to the true annual-rent; for all that was done in the usurper's act, was to take land in satisfaction, and to delay payment; but this clause of the act is nothing such, and so is *casus incogitatus*, which could not be held to be renounced,