

pay, was simply obliged, and was not subject in any heritable condition or obligation, nor holden thereby to pay annual, but when the payment was made either to the party to whom he was bound, or to his creditor artester, or any other. So the LORDS found it was affected with the same condition, and ought to be employed upon land for the parties' warrandice; and thereafter found, that this artester, for his debt due to him, had right to the sum as Sir Thomas had, and might seek the same, but that he ought to employ it upon land for warrandice to Sir William, conform to the destination and condition of his bond.

Act. *Lermonth & Cunningham.*

Alt. *Stuart & Nicolson.*

Clerk, *Gibson.*

*Fol. Dic. v. 4. p. 253. Durie, p. 203.*

1642. February 16. VEITCH against TENANTS and POSSESSORS.

KATHARINE VEITCH being served heir and kened to a terce of some lands, wherein her umquhile husband died infest redeemable, pursues for the duties of the said lands, intromitted with by Veitch of Dawick, divers years since the death of her husband. And the defenders *alleging*, that before the pursuer's husband's decease, the sums whereupon the lands were redeemable, were charged for to be paid in the defunct's lifetime, so that the sums were thereby moveable, which makes the terce of the lands to cease; this allegiance was repelled, because no redemption followed, nor renunciation, nor other deed upon that charge, and the defunct died infest, and undenuded. And the defender *duplicing*, that after the defunct's decease, his son and his tutors renounced that right of wadset; and the pursuer *answering*, that that renunciation done by his tutors, ought not to be respected, not being done by the father in his lifetime, who made the money moveable; the LORDS found the renunciation made by the tutors and minor relevant to elide this pursuit, to exclude the tercer, seeing the wadset was redeemable, and the renunciation made was sustained, being dependent upon a preceding necessary ground of reversion, albeit there was no declarator of redemption; but because the pursuer alleged collusion done betwixt the tutors to her prejudice, the matter was ordained to be further heard.

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 353. Durie, p. 894.*

1673. January 21.

NICOL against LAWRIE.

THERE being a sum due to unquhile Henry Pirie by bond, containing a provision for infestment in certain lands, and a reversion upon the premonition by

No 8.

No 9

A Lady kened to her terce of lands, in which her husband was, infest, redeemable, was found to continue to have right, although the sums had been charged for by her husband, but no redemption nor renunciation had followed. But she was afterwards disappointed in consequence of a renunciation by the tutors of the husband's heir.

No 10.

Consignation by the debtor being ambulatory, as it was in his