

1669. June 21.

WHITEHILL *against* KINTORE.

No 46.

The Court *ex proprio motu* fixed a precise day for purging an irritancy.

ARRRUCHELL reported Sir John Ramsay of Whitehill, against Mr William Kintore of Mount-Lothian, Advocate. Mr William disposes these his lands to Sir John, who gives him a back-bond or reversion, bearing that he had paid him 15,500 merks, and, if he did not redeem at Whitsunday 1698, the lands should irredeemably belong to Sir John on his paying in 2500 merks farther; which 18,000 merks is declared to be the adequate price of the lands. There being an offer made by Mr William, he raises a declarator of redemption. Sir John contends, the order was simulate, and objects sundry nullities against it; and therefore craves the lands may be declared his, on his paying up the remanent price, *Answered*, This was no absolute sale, but on the matter only a wadset, and the back-bond being of the same date is of the nature of a reversion, *et pars contractus*, and like a *pactum incontinenti adjectum*, and as good as if it had been *in gremio* of the right, and therefore it is still purgeable on payment at the bar, whether the consignation was formal or not, this being *pactum legis commissoriae*, which is odious in pledges, and reprobated by all laws. *Replied*, This was no wadset, but a conditional sale, as was found betwixt Earl of Tullibarden and Campbell, No 45. p. 7208., who was not allowed to purge; and though Mount-Lothian be offered now 4000 merks more by Prestongrange for the lands, yet that does not import but the price stipulated and agreed upon between Sir John and him was adequate; for a neighbour *ex æmulatione vicini* may out-bid the value. THE LORDS found it yet purgeable, but that Sir John might have no trouble, declared, if he were not paid betwixt and the 10th of March, the lands should be his, and that there must be no retention on the pretence of causing him compt and reckon for his intromissions with the rents of the lands, Sir John finding caution to repay what afterwards they should instruct against him, else they might keep up his money, and delay him with a tedious compt and reckoning.

Fol. Dic. v. 1. p. 487. Fountainhall, v. 2. p. 46.

1706. February 15.

GRISSEL YOUNG and her Husband *against* ADAM and WILLIAM CRAICKS.

No 47.

Redemption of lands was sustained several years after elapsing of the time fixed, by a back bond of reversion, for using redemption.

IN the process at the instance of Grissel Young and her Husband against Provost Craick's sons, for redeeming a house and some acres of land in Dumfries, disponed by James Young of Broomridge her father, to the defender's father in the year 1675, upon this ground, that he stood obliged by a back-bond to redispone to the disponer, upon his repaying the price;

Alleged for the defenders, that their father's back-bond was conditional in case the price were repaid betwixt and a precise term, which was so far