

It was farther ALLEGED, That albeit he was an apparent heir, and had acquired the right of the comprising, yet there being no order of redemption used, nor he satisfied by intromission, the declarator to find his right null could not be sustained; the Act of Parliament only allowing to use an order within the legal.

It was REPLIED, That the pursuer being willing to satisfy what was resting besides his intromission; and having raised a declarator for that effect, the same ought to be sustained, without any order of redemption.

The Lords did repel the defence, in respect of the reply; and found, That the defender, as apparent heir, being satisfied, by intromission, of the true sums paid for his right of the comprising; and after count, if there be any thing resting, the pursuer having offered presently to make payment, that the delarator being raised within the legal, it ought to be sustained; albeit there was no order of redemption.

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1677. June 28. THOMAS NAIRNE against CLAYHILLS OF INNERGOWRIE.

IN a suspension, raised at Thomas Nairne's instance, for payment of the price of the lands of Bank, disponed to him by Innergowrie, upon these reasons:—

1st. That, by the disposition, he is obliged to infest the suspender in his own lands of Innergowrie, in warrandice of the principal lands; and therefore ought to obtain a confirmation of the king, of the base right of the warrandice lands.

2d. Since the disposition of the warrandice lands, he hath granted an infestment of three hundred merks of a yearly annualrent; which he ought to purge; seeing it may prejudice him of his recourse, in case of distress.

It was ANSWERED to the *first*, That the infestments of the principal lands being public, and clad with possession, the warrandice lands, as to all posterior rights, is a public right; and there being no obligation in the disposition to confirm the same, the disponer, by our law and practick, is never found liable.

It was ANSWERED to the *second*, That there was no necessity to purge the annualrent, because the lands given in warrandice were triple more worth in rent than the principal lands; and so was more than sufficient to give relief in case of distress.

The Lords did find the letters orderly proceeded for payment of the price of the lands, notwithstanding of both these reasons; because, as to the first, there was no special obligation to obtain a confirmation from the superior; but, in case of forefaulture of the disponer, recognition, or liferent escheat, the suspender might obtain a confirmation himself. Likewise, he was expressly bound to pay the charges of the infestment of the principal lands; as likewise, there was sufficient for relief, notwithstanding of the annualrent.

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1677. June 28. The KING'S ADVOCATE against AUCHINFLECK.

IN a declarator, at the Advocate's instance, against Auchinfleck, for the avail