

1684. *March.* PATRICK SIM *against* LORD TORPHICHEN and CHARLES OLIPHANT.

A COMPRISING being craved to be extinguished, by intromission with rents of the appraised lands,—it was alleged, That the compriser, having entered to possession, by virtue of a wadset-right, some years before the appraising, continued to possess as wadsetter after it. Answered, The possession is to be ascribed to the appraising, as *jus nobilius*, especially where the party intromitted indefinitely, without applying his intromission to the wadset expressly by discharges; so that the other creditors were *in bona fide* not to use an order; and, if the rents should be otherwise applied than to extinguish the appraising, the estate would be carried away from the creditors for an inconsiderable sum of 500 or 600 merks, which was the ground of the appraising. Replied, Though, when annual-rents or tacks are absorbed by sovereign rights of property, their possession is to be imputed to the sovereign right; yet, in compatible rights, such as wadsets and appraisings, a person is presumed to continue his possession upon the title of his entry, until he think fit to alter the same; as was found in Bailie Justice's case. Duplied, At least the superplus-intromission, above the annual-rent of the wadset, ought to be imputed to the appraising, even from the date of the wadset, and for years before the appraising; seeing the wadsetter was obliged to pay in the superplus to the granter, and ought not to ascribe it to the stock of the wadset; especially to suffer an odious appraising to expire. The Lords did not determine this point, in respect there was another defence proponed, *viz.* that the reversion of the wadset and appraising was discharged by the defunct; and the pursuer's right flows from his heir, who is liable in warrandice.

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1684. *March.* JOHN GORDON *against* The LAIRD of DRUM.

FOUND that an obligation, in a contract of marriage, to employ a sum upon infetment, &c. is moveable, and prestable by executors, whereof the heir will have relief. *Vide* No. 462, [Anderson against Cant, March 1684.]

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1684. *March.* JEAN ANDERSON *against* ANDREW CANT.

FOUND that an obligation to employ a sum or tocher on lands, &c. is moveable, and to be implemented by executors, whereof the heir will have relief. *Vide* No. 461, [Gordon against Drum, March 1684.]

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