1714. *January* 14. The EARL of LEVIN *against* MORISON of Bognie.

IN the process at the instance of the Earl of Levin against Bognie, The Lords, 10*th February*, 1713, declared that Bognie's adjudication, now in the person of the Earl of Levin, if intrinsically null, could not be sufficient for making an offer of security to the wadsetter, to oblige him to answer for the superplus rents thereafter; and, 8*th July, that same year*, found the adjudication null.

The pursuer now ALLEGED,—Albeit his adjudication was found null, it was not found intrinsically null, in the terms of the foresaid interlocutor. And though declared null *ex post facto*, yet being a standing decreet unreduced, (which was a colourable title at the time,) it might sufficiently validate the offer of caution in order to restrict, though it did not convey such a legal title to the reversion as could have obliged the wadsetter to cede the possession. So rights labouring under informalities, have considerable effects in law:—23*d July*, 1713, *Duncan* contra *Miller*; 13*th July*, 1664, *E. Lauderdale* contra *Wolmet*. Are they not ofttimes sustained for security of the debt; and as titles in removing, and mails and duties, against tenants, who are not allowed to object? Had Bognie's adjudication wanted the necessary outward essentials of a decreet, as the subscription of the clerk, or the like, it had indeed been good to no manner of purpose. But the extract being formal in the essentials, and only laid open after debate, it was certainly a sufficient presumptive title for temporary effects, till it was annulled.

ANSWERED for the defender,—He was not obliged to regard an offer of security by any to whom he could not legally surrender the possession. For if he did, the true reverser was entitled to make a new offer, and to require possession. And a null adjudication could be considered only as a personal right, which doth not carry the reversion. Nor could the privilege of the offer made by the informal adjudger, accresce to other creditors.

REPLIED for the pursuer,—Did an informal adjudger offer payment to the wadsetter, he could not refuse it, in regard that excludes his interest. So, for the same reason, may such an adjudger offer security. It is nothing to the purpose to say, that an offer of that kind would not hinder a mere legal reverser to offer *de novo*. For, if the wadsetter cede possession, and accept the offered security, there is no place for any farther offer. And if he do not cede it, but is countable for the superplus rents, he is neither better nor worse by any other offer. Again, the legal offer of security being a real exception, is profitable to all creditors, in the same way as compensation; extinguishing a debt which would carry away the subject of their payment.

The Lords found, that the adjudication having been a standing unqualified adjudication, at the time of the offer, premonition, and order of redemption to Bognie, to accept of security, and an act having been extracted thereupon, sustaining the said order,—the said adjudication and order (though the adjudication was afterwards found null,) was a sufficient title to interrupt the wadsetter's *bona fides*, and to make him liable for the superplus rents of the wadset lands, from and after the offer of premonition, or order of redemption.

MS. page 14.